Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

STARLETTA LUQUISE BANKS,

Petitioner,

v.

GRANHOLM, ET AL.,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether Petitioner was "injured" under 42 U.S.C. § 1983 where the conduct of respondents constituted intrinsic fraud, financial conflict of interest, conflict of interest and non-disclosure acting "under color of law" terminated her parental rights.

2 Whether the Sixth Circuit erred by refusing to apply a Michigan statute of limitations and the coordinate tolling rules in a 42 U.S.C. § 1983 cause of action under Mich. Comp. Laws Ann. § 600.5805 which allows three years after discovery to file a cause of action, and Mich. Comp. Laws Ann. § 600.5855 for "fraudulent concealment", which allows a person to commence an action at anytime within two years after discovery of a cause of action.

3. Whether the Sixth Circuit erred by refusing to determine the controlling law when a question of state law was at issue concerning the parent/agency agreement contract, in which a federal court must ascertain the state law from "all relevant data" which includes the state's appellate court decision, when they affirmed the district court's decision on the grounds of statute of limitations.

4. Whether it constitutes affirmative misrepresentation and breach of contract when a parent is told that she must comply with a parent/agency agreement contract in order to regain custody of her child/children and she relies on the contract for reunification, and after she has substantially complied and successfully completed the contract, the parent's rights were still terminated.

QUESTIONS PRESENTED – Continued

5. Whether equitable estoppel operates to save the Petitioner's complaint where respondents have mislead the Petitioner to comply with a parent/agency agreement contract induced by fraud to generate federal grant money, to keep from filing a timely action.

6. Whether **District Court's** refusal to grant Motions for Reconsiderations was inconsistent with substantiated justice and adversely impacted the substantial rights of Appellant.

7. Whether the adoption of Petitioner's Children was lawful while appeal was pending.

8. Whether Appellate Judge Ransey Guy Cole Jr.'s failure to remove himself from Petitioner's case pursuant to section 455(a) deprived her of a right to a "neutral and detached judge."

PARTIES TO THE PROCEEDINGS AND CORPORATE DISCLOSURE STATEMENT

Petitioner is Starletta L. Banks. Petitioner is not a publicly traded company owning stock. Respondents are Jennifer Granholm, Michael Cox, Richard Karoub, Annamaria Church, Vincent Palusci, Thomas Slovis, Marianne Udow, Ted Forrest, Judy Hartsfield, Kathleen Jansen, Hilda Gage, and Patricia Campbell.

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OPINIONS BELOW

The United States Court of Appeals for the Sixth Circuit denied Petition for Rehearing on September 11, 2006. App. 12. The United States Court of Appeals for the Sixth Circuit Order to affirm on June 19, 2006. App. 1. The United States District Court for the Eastern District of Michigan Order and Opinion denying Motion for Reconsideration and Motion to Vacate on September 28, 2005. (R. 31). The United States District Court for the Eastern District of Michigan Opinion and Order on July 27, 2005. (R. 21). The Michigan Supreme Court Order denying Motion for Reconsideration on April 29, 2003. (R. 24, Ex. 4). Michigan Supreme Court Order denying Delayed Application for Leave to Appeal on January 28, 2003. (R. 24, Ex. 3).

STATEMENT OF JURISDICTION

The Sixth Circuit issued its rehearing order on September 11, 2006. This Petition for Certiorari is timely in that Petitioner has filed it within 90 days of September 11, 2006. The Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

This case involves the interpretation and application of Title 18 U.S.C. § 241, Title 18 U.S.C. § 242, Title 18 U.S.C. § 371, Title 28 U.S.C. § 455(a), Title 18 U.S.C. § 1346, RICO (Racketeer Influenced Corrupt Organizations Act, 18 U.S.C. §§ 1961 et seq., Title 18 U.S.C. § 1962(a)(b)(c)(d), Title 18 U.S.C. § 1964(a)(b)(c), Title 42 U.S.C. § 1983, U.S. Constitution Fourteenth Amendment, Constitution of the State of Michigan of 1963 Article V Section 1 and Section 8 and Conflict of Interest (Excerpt), Act 318 of 1968 of the Constitution Section 10 of Article 4, Section 2 §15.302 and Section 3 §15.303 (a)(b). The relevant portions are reproduced in the appendix at App. 16.

STATEMENT OF THE CASE

I. Overview of the case

Ms. Starletta L. Banks the Petitioner, was falsely accused of child abuse and neglect which resulted in the termination of her parental rights to her three minor children. Petitioner filed a complaint on June 6, 2005 alleging intrinsic fraud, financial conflict of interest, conflict of interest and non-disclosure, and an 18 U.S.C. §§ 1961 et seq. cause of action for RICO (Racketeer Influenced and Corrupt Organizations Act). Ms. Banks discovered that the respondents involved with the termination of her parental rights have a conspiracy and financial interest in seizing children to generate federal grant money and as a result, her constitutional, civil and due process rights were violated in violation of Title 18 U.S.C. §§ 241 and 242. The United States District Court for the Eastern District of Michigan dismissed Petitioner complaint with prejudice finding that Petitioner's complaint failed to satisfy the three-year statute of limitations. The United States Court of Appeals for the Sixth Circuit affirmed. The statute of limitations period in a 42 U.S.C. § 1983 cause of action in Michigan is three years. *Wolfe v. Perry*, 412 F.3d 707, 713-14 (6th Cir. 2005), and begins to run when the plaintiff knows or has reason to know that the act providing the basis of injury has occurred. *See Friedman v. Estate of Presser*, 929 F.2d 1151 (6th Cir. 1991). The statute for civil RICO begins to run within four years when the victim discovers or reasonably should have known its injury. *Rotella v. Wood*, 528 U.S. 549, 553-56 (2000).

II. Background of the case

The Sixth Circuit panel affirmed the District Court's order to dismiss Ms. Banks complaint on the grounds of statute of limitations finding that Petitioner's complaint did not comport with the three-year statute of limitations in Mich. Comp. Laws. Ann § 600.5805. Petitioner showed a palpable defect in which the Sixth Circuit and the District Court had been misled on the date in which the

Petitioner's time should have accrued. Secondly, Petitioner had alleged intrinsic fraud. See Complaint (R. 1) and had explained to the Sixth Circuit and the District Court that she just discovered the fraud and financial conflicts of interest within the last year of her filing her federal complaint on June 6, 2005. *See* Judicial Notice (R. 18 pp. 7, 8 Ex. 2). *See* Request for Reconsideration (R. 24, pp. 2, 3 Ex. 3, 4, 5). *See* Motion to Vacate (R. 25, pp. 1, 2, 3, 5). *See Pro Se* Appellant's Brief. App. ___. *See* (Reply) Brief for Church. App. ___. *See* (Reply) Brief for State Defendants. App. ___. *See* (Reply) Brief for Slovis. App. ___. *See* (Reply) Brief for Palusci. App. ___. *See* Petition for Rehearing. App. 12, and *see* Motion to Recuse. App. ___. This evidence was overlooked by the Sixth Circuit and the District Court.

In October 1998, Ms. Banks 9 month old daughter Danielle Austin accidentally rolled off of a bed unto a hard-wood floor and hit her head, Ms. Banks took Danielle to Henry Ford Hospital and asked the doctor to check Danielle's head to assure she was ok. The doctor took an x-ray of Danielle and alleged that she had a non-depressed linear skull fracture. The Hospital transferred Danielle to Henry Ford Hospital main facility for further examination and the doctor there examined Danielle and alleged that Danielle had an old healing rib fracture of the sixth rib. Mary Otto, a nurse from Henry Ford Hospital, contacted child protective services. Social worker Allison Manning arrived at the hospital and interviewed Ms. Banks and her mother Barbara Banks and then released Danielle to the custody of her mother, Starletta Banks.

Approximately, four days later, two Detroit Police officers and two social workers came to Ms. Banks home without a warrant and removed her two minor children Darius Banks age four, and Danielle Austin age 9 months from their home and placed them in foster care. Ms. Banks was accused of child abuse/neglect. Ms. Banks parents Mr. Leo and Barbara Banks were eventually given temporary guardianship of their two grandchildren.

Social worker Watisha Sims came to Ms. Banks home and presented her with a parent/agency agreement contract to sign. Ms. Sims told Ms. Banks that she had to sign the contract in order to regain custody of her children. Ms. Banks signed the parent/agency agreement contract.

On January 28, 1999, Ms. Banks took Danielle to see her pediatrician Dr. Korkut Akan because she did not believe that Danielle had suffered a non depressed linear skull fracture and a healing fracture of the sixth rib as alleged. Dr. Akan examined Danielle and concluded that their was "NO EVIDENCE" of a old healing rib fracture. Dr. Akan gave Ms. Banks a copy of his report.

In February 1999 during a dispositional review hearing before Referee Richard Smart III, the attorney general brought Dr. Annamaria Church in as an "expert witness" against Ms. Banks. Dr. Church brought in six x-rays allegedly of Danielle and testified that Danielle had a skull fracture and an old healing rib fracture of the sixth rib and that Ms. Banks had abused her daughter. Dr. Church testified that she had never seen or examined Danielle, and that she was contacted by the hospital on her cell phone to ask her opinion. Dr. Church testified that fractures in infants heal rapidly and disappear in two to three months. Referee Smart gave the x-rays back to Dr. Church to take with her.

In March, 1999, Dr. Church testified again against Ms. Banks alleging that Danielle had suffered yet another old healing rib fracture to the seventh rib when she was taken to her pediatrician Dr. Akan. Referee Smart ordered that Ms. Banks children be removed immediately from her parents Mr. Leo and Barbara Banks. Ms. Banks ignored the referee's order and immediately took her daughter Danielle to Children's Hospital of Michigan for a second opinion.

Ms. Banks explained to the attending physician Dr. Rachael Stanley that a doctor was alleging that Danielle had a non-depressed linear skull fracture and old healing rib fracture of the sixth and seventh rib. Dr. Rachael Stanley examined Danielle and took x-rays of her entire body. Dr. Rachael Stanley concluded that their was "NO

EVIDENCE" of a skull fracture or rib fractures as alleged by Henry Ford Hospital. Dr. Rachael Stanley told Ms. Banks that fractures in infants take 6 months to a year to heal sometimes two years, depending on the child. Dr. Rachael Stanley gave Ms. Banks a copy of her report and free copy of Danielle's x-rays.

Ms. Banks went to Henry Ford Hospital and purchased a copy of Danielle's x-rays for $415.00. In March 1999, Ms. Banks had Dr. Arthur Bouier to examine the x-rays taken at Henry Ford Hospital. Dr. Bouier testified at a dispositional review hearing before Referee Smart that Dr. Church had lied about evidence of an old healing rib fracture of the sixth and seventh rib on the Henry Ford Hospital x-rays. Dr. Bouier further testified that Dr. Church had lied about the time it takes fractures to heal in infants. Dr. Bouier testified that fractures in infants take 6 months to a year to heal, and not two to three months as Dr. Church had alleged.

In March 1999, Referee Smart ordered Ms. Banks children to have a complete bone skeletal survey by a neutral hospital because of the conflicting testimony and reports. Referee Smart ordered that Darius and Danielle be examined at St. John Macomb Hospital Center. St. John's refused to examine Darius, stating that "there was no need." However, they did examine Danielle and took x-rays of her head and chest and concluded that there was "NO EVIDENCE" of a skull or rib fractures as alleged. Ms. Banks obtained a copy of St. John's report.

Ms. Banks believed that someone at Henry Ford Hospital had made a mistake, and that the report from St. John's would resolve the case, but that was not to be. Referee Smart ordered Ms. Banks to comply with the parent/agency agreement contract and to see a psychologist at a clinic for child study located behind the Court. Ms. Banks complied.

On August 13, 1999, Ms. Banks gave birth to her third child Darren Austin. Darren was immediately placed in foster care. In September 1999, the case was transferred to Referee Eugene Terry for a dispositional review hearing,

whereby, Social Worker Ms. Jetuan Richardson testified that Ms. Banks was in compliance with her parent/agency agreement contact.

In December 1999, the case was transferred to Referee Kathleen Walton. Ms. Richardson recommended that Darius, Danielle and Darren be returned to their mother Ms. Banks. Referee Walton refused to return Ms. Banks' children stating that she had failed to "admit" and accept responsibility of why her children came under the jurisdiction of the court and ordered Ms. Banks be re-evaluated by a psychiatrist.

In March 2000, the attorney general petitioned the court to take permanent custody of Ms. Banks three minor children, and Ms. Banks never saw her children again.

In August 2000, at a parental rights termination hearing, the attorney general brought Dr. Thomas Slovis in as a "expert witness" against Ms. Banks. Dr. Slovis works at Children's Hospital of Michigan as the head of pediatric radiology. Dr. Slovis testified that Danielle had suffered a non depressed linear skull fracture and a healing rib fracture of the sixth and seventh rib. Dr. Slovis had contradicted Dr. Rachel Stanley's previous findings from the Children's Hospital of Michigan.

In October 2000, Judge Patricia Campbell mailed Ms. Banks an order terminating her parental rights to her three minor children Darius, Danielle and Darren. Judge Campbell stated in her order that Ms. Banks failed to "admit" and accept responsibility for her daughter's injuries, thus the children would be in danger if returned home. In October 2000, Ms. Banks filed a timely Notice Of Appeal in the Michigan Court of Appeals.

In January 2001, while on appeal, Ms. Banks' parents Mr. Leo and Barbara Banks petitioned the court for guardianship, and was granted full guardianship of their three minor grandchildren by Judge Glenn C. Valasco. The attorney general Richard Karoub filed a motion to vacate guardianship, and guardianship was revoked.

On July 9, 2002, the Michigan Court of Appeals affirmed Judge Campbell's order terminating Ms. Banks

parental rights to her three minor children. The Court stated "that despite the medical evidence, Ms. Banks continued to deny Danielle's injuries and that she had failed to comply with her parent/agency agreement contract." Ms Banks filed a timely Motion for Reconsideration.

On September 16, 2002, the Michigan Court of Appeals denied the Motion for Reconsideration. Ms. Banks filed a delayed application for leave to appeal to the Michigan Supreme Court.

On January 28, 2003, the Michigan Supreme Court denied the appeal stating that "they are not persuaded that the questions presented should be reviewed by their Court." Ms. Banks filed a timely Motion for Reconsideration with the Michigan Supreme Court. On April 29, 2003, the Michigan Supreme Court denied the Motion for Reconsideration stating that "it does not appear that the order was entered erroneously."

On February 4, 2003, A Request and Order Terminating Court Jurisdiction, and the final order of adoption of Ms. Banks' children was entered by Hon. Sheila Gibson Manning, In the Third Circuit Wayne County Court, without a hearing.

On February 26, 2004, Ms. Banks wrote a notarized letter to the Federal Bureau of Investigation and A.C.L.U. of Michigan and a notarized and certified letter to Mr. Jerome Rutland Director of Wayne County, Mr. Michael Patterson Intrim Zone 10 Manager and Mrs. Kim Jones Foster Care Adoption Analyst concerning the unlawful termination of her parental rights and that she had complied with state laws and requirements to raise her children. On March 30, 2004, Ms. Banks wrote a certified letter to the Office of the Children's Ombudsman for an investigation.

On June 6, 2005, Ms. Banks filed a complaint in the United States District Court for the Eastern District of Michigan alleging intrinsic fraud, financial conflict of interest, conflict of interest and non-disclosure. Petitioner did diligently seek out the truth and as a reasonable person it took some time to find out these hidden fraudulent activities. The respondents have affirmatively and

fraudulently concealed their unlawful scheme and course of conduct from Petitioner through an elaborate scheme of affirmative acts, as factually alleged in Petitioner complaint.

Ms. Banks discovered between January 2005 through May 2005 that Michigan has a nonprofit organization called Michigan Children's Trust Fund. This nonprofit generates money for child abuse and neglect, to fund other nonprofits for child abuse and neglect. Respondent, Governor Jennifer Granholm appoints 10-15 members to the Michigan Children's Trust Fund. The Respondents ARE the boards of the Children's Trust Fund and other fraudulent nonprofits receiving federal grant money to separate children from their parents. Dr. Church, Dr. Slovis and Dr. Palusci testifies before the State Respondents with whom they serve on the nonprofit organizations against the unsuspecting public creating a financial conflict of interest and they are not disclosing it. Respondent Kathleen Jansen failed to disclose her financial conflicts of interest with respondents Dr. Church and Dr. Slovis regarding the Children's Trust Fund, as she upheld their testimony against Ms Banks in the Michigan Court of Appeals. The Children's Trust Fund have received over $60 million dollars in revenues, yet the Children's Trust Fund is not registered with the IRS and the IRS has no record of this nonprofit organization *See* Motion to Recuse (letter from IRS) Exhibit 2. App. ___.

Dr. Church has created a special license plate to sell through the Secretary of State for the Children's Trust Fund called "Children Just Love'em". Each license plate generates a $25.00 donation to the Children's Trust Fund to prevent child abuse and neglect. The hospitals where Dr. Church, Dr. Slovis and Dr. Palusci are employed, have a contract with the Children's Trust Fund and the Department of Human Services, an agency who is represented in Family Court by the Attorney General and responsible for issuing the parent/agency agreement contract.

Hence, this is a conflict of interest in violation of the Conflict of Interest Act 318 of 1968 Section 10 of Article 4 of the Constitution of Michigan, Section 2 § 15.302.

Granholm has a task force on child abuse and neglect/children's justice. The project was funded by a federal Children's Justice Act grant to the Governor's task force on Children's Justice administered through the Department of Health and Human Services under Child Abuse Prevention and Treatment Act, Administration of Children and Families. Michigan Supreme Court Justice Elizabeth A. Weaver, (not a defendant) who denied Ms. Banks appeal, who served as chief justice from 1999-2000, is chairperson of the taskforce, appointed by Granholm. Dr. Church is the trainer for the task force.

Dr. Church, Dr. Slovis and Dr. Palusci serve the prosecutors office and the Attorney Generals office as "expert witness's" in civil, criminal and any other cases involving the Courts creating a conflict of interest. The aforementioned doctors have a financial interest in seizing children for the State employee defendants and are a part of a special interest group for child abuse and neglect and they are not disclosing it.

The "skull fracture" and "rib fractures" that Dr. Church and Dr. Slovis alleged that Danielle had are federally funded, according to Granholm's task force on Children's Justice, Justice Act grant. Once these doctors create a case to generate federal grant money, the parents are left to fight the biased prosecutor and attorney general.

Respondent Ted Forrest is a liaison for the U.S. Department of Health and Human Services, and was appointed to make sure parents are not falsely accused of child abuse. In a GROSS conflict of interest, he is involved with the Children's Trust Fund, he serves as manager of Child Protective Services, and sits on Jennifer Granholm's taskforce for child abuse and neglect.

The respondents have a conspiracy to deprive parents of their children for the financial incentives in violation of 18 U.S.C. § 371, by using children and families as grant

money "cash cows" to defraud the government and generate federal grant money and are failing to disclose. *Roviaro v. United States*, 353 U.S. 53, 59-61, 77 S.Ct. 623, 1 L.Ed.2d 693 (1957). Pursuant to Article V, Section 1 of the Constitution of Michigan of 1963, the executive power of the State is vested in the Governor, and the Governor is responsible for ensuring that all departments and agencies within the State, including the DHS, faithfully execute and comply with applicable federal and state law.

Ms. Banks relies heavily on the definition of "defraud" provided by the Supreme Court of the United States in two early cases, *Haas v. Henkel*, 216 U.S. 462 (1910), and *Hammerschmidt v. United States*, 265 U.S. 182 (1924). In *Haas* the Court stated:

> The statute is broad enough in its terms to include any conspiracy for the purpose of impairing, obstructing or defeating the lawful function of any department of government . . . (A)ny conspiracy which is calculated to obstruct or impair its efficiency and destroy the value of its operation and reports as fair, impartial and reasonably accurate, would be to defraud the United States by depriving it of its lawful right and duty of promulgating or diffusing the information so officially acquired in the way and at the time required by law or departmental regulation.

Haas, 216 U.S. at 479-480.

In *Hammerschmidt*, Chief Justice Taft, defined "defraud" as follows:

> To conspire to defraud the United States means primarily to cheat the Government out of property or money, but it also means to interfere with or obstruct one of its lawful governmental functions by deceit, craft or trickery, or at least by means that are dishonest. It is not necessary that the Government shall be subjected to property or pecuniary loss by the fraud, but only that it's legitimate official action and purpose shall be defeated by misrepresentation, chicane or the

> overreaching of those charged with carrying out the governmental intention.

Hammerschmidt, 265 U.S. at 188. The general purpose of this part of the statute is to protect governmental functions from frustration and distortion through deceptive practices. Section 371 reaches "any conspiracy for the purpose of impairing, obstructing or defeating the lawful function of any department of Government." *Tanner v. United States*, 483 U.S. 107, 128 (1987). The "defraud part of section 371 criminalizes any willful impairment of a legitimate function of government, whether or not the improper acts or objective are criminal under another statute." *United States v. Tuohey*, 867 F.2d 534, 537 (9th Cir. 1989). The word "defraud" in Section 371 not only reaches financial or property loss through use of scheme or artifice to defraud but also is designed and intended to protect the integrity of the United States and its agencies, programs and policies. *United States v. Burgin*, 621 F.2d 1352, 1356 (5th Cir.), cert. denied, 449 U.S. 1015 (1980). Thus, if a defendant and others have engaged in dishonest practices in connection with a program administered by an agency of Government, it constitutes a fraud on the United States under Section 371. *United States v. Gallup*, 812 F.2d 1271, 1276 (10th Cir. 1987). In summary, those activities which courts have held defraud the United States under 18 U.S.C. § 371 affect the government in at least one of three ways: (1) They cheat the government out of money or property; (2) They interfere or obstruct legitimate Government activity; or (3) They make wrongful use of a governmental instrumentality.

The Supreme Court has emphasized time and again that "[t]he touchstone of due process is protection of the individual against arbitrary action of government." *Collins v. Harker Heights*, 503 U.S. 115, 126 (1992) (noting that the Due Process Clause was intended to prevent government officials "from abusing [their] power, or employing it as an instrument of oppression") (citation omitted). This is so "whether the fault lies in a denial of fundamental procedural fairness" or "in the exercise of power without any reasonable justification in the service of a legitimate

governmental objective." *Lewis*, 118 S.Ct. at 1716. The Supreme Court's decision in *Jenkins v. McKeithen*, 395 U.S. 411 (1969) recognized that the public branding of an individual implicates either "liberty" or "property" interests, and that neither can be achieved by the government without following certain procedural safeguards to ensure the elimination of arbitrary or capricious actions. "Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential." *Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1971).

On June 28, 2005, the assistant attorney general filed a motion to dismiss Ms. Banks complaint in the District Court, pursuant to Fed. R. Civ. P. 12(b)(6), based on an erroneous date of January 12, 2001 as Ms. Banks "last complained action" that he picked out of her complaint as she gave a factual background of the events that had transpired in the state court. (R. 8). On July 11, 2005, in response to the state defendants motion to dismiss based on the argument that the statute of limitations had run as to Appellant § 1983 claim, Appellant filed a Judicial Notice and Request for Trial Scheduling Order (R. 18). In paragraph 10 of the Judicial Notice, Petitioner opposed defendants motion to dismiss attaching the Michigan Supreme Courts order dated January 23, 2003 in Exhibit 2. R. 18, Ex. 2). On July 27, 2005, the District Court dismissed the Petitioners complaint with prejudice on the grounds of statute of limitations. (R. 21). On August 5, 2005, Petitioner filed a timely, Motion for Reconsideration and Motion to Vacate. (R. 24) and (R. 25). Petitioner demonstrated in her Motion for Reconsideration palpable defect by which the District Court had been misled. *Cannon-Harper v. U.S. Postmaster General* (E.D.Mich. 10-17-2006). In Petitioner's complaint filed in the U.S. District Court of Michigan on June 6, 2005 Inter alia, the complaint in paragraph 29 alleges "On January 12, 2001, the court granted full custody of plaintiff's children to plaintiff's parents, then later arbitrarily and capriciously denied this custody. Plaintiff's three children were consigned to the children-for-profit money making machine run by defendants. In the aforementioned defendant's

motion to dismiss, the defendants admitted that Appellant did state a claim for relief under 42 U.S.C. § 1983, and that Appellant claims must comport with the three-year statute of limitations period in Mich. Comp. Law Ann. § 600.5805 (1). (R. 8, pg. 2).

In paragraph 4 of said motion defendants state that the last act complained of for which damages arise accrued in January of 2001. In paragraph 5 of said motion defendants state that Appellant filed the complaint on June 6, 2005, four and half years after the last event, and in paragraph 6 of said motion, that the claim is therefore barred. (R. 8). Appellant, in pro se believed the Request for Reconsideration was sufficient and apprised the District Court that it had been mislead by the State defendants on the statute of limitations issue. (R. 24, pg. 2). In paragraph 4 of Appellant's Request for Reconsideration, Pg 2., Appellants states the following:

DEFENDANTS MISLED THIS COURT
ON STATUTE OF LIMITATIONS

4. Defendants neglected to inform this Court of plaintiffs record in the state appeals court, which shows that the last date of denial was April 29, 2003 see Exhibit 4. This puts plaintiff well within her statute of limitations. (R. 24, pg. 2).

Exhibit 4 is denial of appellants Motion for Reconsideration by the Michigan Supreme Court dated April 29, 2003. More evident that a palpable defect existed as to the date upon which the U.S. District Court should have decided the State defendants' motion to dismiss, in Exhibit 5 of the Appellants August 5, 2005 Request for Reconsideration. Exhibit 5, filed in the Third Circuit Wayne County Court, entitled Request and Order Termination Court Jurisdiction indicates the final order of adoption of Appellant's children was entered on February 4, 2003 by Hon. Sheila Gibson Manning, without a hearing. In its Opinion and Order denying Appellants Motion for Reconsideration and Motion to Vacate, the Court acknowledges the April 29, 2003 date of denial by the Michigan Supreme Court, but fails to acknowledge Exhibit 5, a part of the record, which clearly indicates that an issue arose as to the date

of the last act complained or occurring as a violation of Appellants rights under 42 U.S.C. § 1983. Here Appellant has demonstrated palpable error and the misleading of the Court as to the date on which the statute of limitations would begin to run in Appellants § 1983 cause of action. Correcting the defect of the correct or proper date upon which the Court should have decided whether the statute of limitations had run on Appellant's 42 U.S.C. § 1983 claim would certainly have a different result in the disposition of this case. Namely, that Appellant filed a complaint on June 6, 2005. The unlawful adoption of her children caused by the named defendants and final order thereof occurred on February 4, 2003. Appellant agrees that the three-year statute of limitations under Mich. Comp. Laws Ann. § 600.5805(1) applies to her 42 U.S.C. § 1983 claim and in light thereof, that her June 6, 2005 complaint was timely as she had until February 4, 2006 to file a claim. The U.S. District Court erred in refusing to grant Appellants Request for Reconsideration where the court failed to discuss or rule on the palpable defect by which it had been misled and which upon being advised by Appellant in Exhibit 5 of her Request for Reconsideration, would have afforded Appellant her substantial rights and resulted in a different disposition by the Court. Because Appellant has a Constitutional right and interest in her children substantial justice required the District Court to consider the proper date in deciding the statute of limitations issue in the aforesaid motion to dismiss. For these reasons Appellant request reversal and remand to the U.S. District Court of Appeals. Ms. Banks had also explained to the District Court in her Judicial Notice, Motion for Reconsideration and Motion to Vacate that she had just discovered the intrinsic fraud and the financial conflicts of interest within the year she filed her June 6, 2005 federal complaint. (R. 18 pp. 7, 8), (R. 24 pp. 2-3) and (R. 25 pg. 3).

The Sixth Circuit reviews de novo whether a District Court properly dismissed a complaint under Federal Rule of Civil Procedure 12(b)(6). *Banks v. City of Whitehall*, 344 F.3d 550, 553 (6th Cir. 2003).

Furthermore, the District Court did not properly dismiss the Petitioner's case with respondents Dr. Church and Dr. Palusci. The aforementioned respondents filed a Motion to Enlarge Time for Filing Responsive Pleadings, with a Memorandum Brief in Support, to allegedly see what role they played in Petitioner's claims. (R. 11, pg. 3). The Respondent's did not file a motion asking the District Court to dismiss the case. The District Court clearly stated in its Order to dismiss Petitioner's complaint that the matter before him was on behalf of the state employee defendants. (R. 21, pg. 1). Respondent's Dr. Church and Dr. Palusci are not state employee defendants in Petitioners federal suit. Ms. Banks filed a Request for Clerk's Entry of Default and Request for Default Judgment against respondents Dr. Church and Dr. Palusci (R. 34) and (R. 35).

On August 25, 2005, Ms. Banks filed a timely Notice of Appeal to the United States Court of Appeals for the Sixth Circuit. (R. 26). On appeal, Ms. Banks argued that her complaint was timely filed under Mich. Comp. Law Ann. § 600.5805(10) and that the last action involving Petitioner and her children was on April 29, 2003, when the Michigan Supreme Court denied her Motion for Reconsideration. Mich. Comp. Law Ann. § 600.5805(10) states: The period of limitations is three years after the time of death or injury for all other actions to recover damages for the death of a person, or for injury to a person or property. On December 27, 2005, in Petitioners (REPLY) Brief for the State Defendants in the Sixth Circuit, Petitioner reattached all five Exhibits attached in her Motion for Reconsideration in the District Court, showing a palpable defect. App. ___. Ms. Banks had also explained to the Sixth Circuit that she had just discovered the intrinsic fraud and financial conflicts of interests within the year she filed her federal complaint on June 6, 2005, thus she argued that her complaint was timely filed.

Since Congress did not enact a statute of limitations for actions brought under 42 U.S.C. § 1983, federal courts must look to state law to determine the appropriate limitations period. *Sharpe v. Cureton*, 319 F.3d 259, 266 (6th Cir.

2003) and apply the state statute of limitations most analogous to the asserted claim. *Dunn v. Tennessee*, 697 F.2d 121 (6th Cir. 1982). The Sixth Circuit has stated, in this Circuit there is a strong presumption that a plaintiffs delay is reasonable so long as the analogous statute of limitations has not elapsed. *See Tandy Corp. v. Malone & Hyde, Inc.*, 769 F.2d 362, 365-66 (6th Cir. 1985), cert. denied, 476 U.S. 1158, 106 S.Ct. 2277, 90 L.Ed.2d 719 (1986).

On June 19, 2006, the Sixth Circuit affirmed the District Courts Order and Opinion on statute of limitation grounds finding that Ms. Banks claims were based on the removal of her children from her home on October 21, 1998 and the subsequent termination of her parental rights. The Court found that the last action Ms. Banks complains of in her complaint occurred in January 2001 and that she had not asserted that the statute of limitations should be tolled under Michigan law, and that it was under these circumstances, Ms. Banks § 1983 cause of action was not timely filed. App. ___.

However, equitable tolling is not permissible where it is inconsistent with the text of the relevant statute. *United States v. Brockamp*, 519 U.S. ___ (1997). Here, where Ms. Banks provided that the statute of limitations will not begin to run until the plaintiff "knew or should have known of the claim, has already effectively allowed for equitable tolling." *See Irwin v. Department of Veterans Affairs*, 498 U.S. 89, 96 (1990).

On June 27, 2006, Petitioner filed a timely Petition for Rehearing. App. ___. Petitioner asserted that under Mich. Comp. Laws Ann. § 600.5855 fraudulent concealment of claim or identity of person liable: discovery, which states:

> If a person who is or may be liable for any claim fraudulently conceals the existence of the claim or the identity of any person who is liable for the claim from the knowledge of the person entitled to sue on the claim, the action may be commenced at any time within 2 years after the person who is entitled to bring the action discovers, or should have discovered, the existence of

> the claim or the identity of the person who is liable for the claim.

Petitioner asserted that the respondents fraudulently concealed the intrinsic fraud and RICO cause of action, thus entitling Petitioner to two years from the date of discovery to file the claim pursuant to Mich. Comp. Laws Ann. § 600.5855 fraudulent concealment. App. ___.

Petitioner asserted that she had a breach of contract cause of action because the attorney general affirmatively deceived her with a parent/agency agreement contract, which she relied to her detriment. Ms. Banks substantially complied with her parent/agency agreement contract and the recommendation was to return her three minor children to her companionship, care and custody *See* (REPLY) BRIEF for "State Employee Defendants" Exhibit 5 (parent/agency agreement contract). App. ___. The attorney general strung Ms. Banks along in an attempt to expire her statute of limitations by misrepresenting a faulty parent/agency agreement contract and misleading Petitioner to comply with it. The failure to return Ms. Banks children after she complied with the parent/agency agreement contract constituted "breach of contract" and "affirmative misconduct". Under Mich. Comp. Law Ann. § 600.5807(8) breach of contract it states:

> No person may bring or maintain any action to recover *damages or sums due for breach of contract*, or to enforce the specific performance of any contract unless, after the claim first accrued to himself or to someone through whom he claims, he commences the action within the periods of time prescribed by this section.
>
> (8) The period of limitations is 6 years for all other actions to recover damages or sums due for breach of contract.

Specifically, section 600.5807(8) provides for a six-year limitations period for breach of contract actions, starting from the date that the claim "accrued," § 600.5807. Breach of contract actions accrue "at the time of the asserted breach of contract." *Huhtala v. Travelers Insurance Co.*, 257 N.W.2d at 646; see also *Echols v. Chrysler Corp.*, 633 F.2d 722, 726 (6th

Cir. 1980). Accordingly, Ms. Banks is well within her statute of limitations for breach of contract.

The Sixth Circuit has stated that, Our court has never announced the definition of "affirmative misconduct." Although we have cases applying the rule, *see, e.g., In re Gardner*, 360 F.3d 551, 559 (6th Cir. 2004), we have not set the bounds of the concept. A review of our sister circuits, however, reflects a general consensus on the definition. The Ninth Circuit defines "affirmative misconduct" as a deliberate lie or a pattern of false promises. *Socop-Gonzalez v. I.N.S.*, 272 F.3d 1176, 1184 (9th Cir. 2001) (en banc). The Seventh Circuit defines "affirmative misconduct" as "more than mere negligence. . . It requires an affirmative act to misrepresent or mislead." *LaBonte v. United States*, 233 F.3d at 1053 (7th Cir. 2000). The Fifth Circuit, in almost identical language, defines "affirmative misconduct" as "Something more than mere negligent conduct." *United States v. Marine Shale Processors*, 81, F.3d 1329, 1350 n. 12 (5th Cir. 1996). Instead, "the [government] official must intentionally or recklessly mislead the estoppel claimant." Lastly, the Fourth Circuit defines "affirmative misconduct" as lying rather than misleading and as malicious, not negligence, conduct. *Keener v. E Associated Coal Corp.*, 954 F.2d 209, 214 n.6 (4th Cir. 1992). Finding the common approach of sister circuits prudential, we hold that "affirmative misconduct" is more than mere negligence. It is an act by the government that either intentionally or recklessly misleads the claimant. The party asserting estoppel against the government bears the burden of proving an intentional act by an agent of the government and the agent's requisite intent.

Ms. Banks case is controlled by *Neustadt.* As the Supreme Court recognized in that decision, the essence of an action for misrepresentation, whether negligent or intentional, is the communication of misinformation on which the recipient relies. *United States v. Neustadt*, 366 U.S. 696. Ms. Banks has alleged an injury that she suffered independently of her reliance on a fraudulent parent/agency agreement contract.

Petitioner asserted equitable estoppel against the respondents in her Petition for Rehearing. Equitable estoppel applies where plaintiff was induced by fraud, misrepresentation or deception to refrain from filing a timely action. *Farkas v. Farkas*, 168 F.3d 638, 642 (2d Cir. 1999). Underlying this rule is "the principle that a wrongdoer should not be able to take refuge behind the shield of his own wrong is a truism." *Stencils v. Chiappa*, 18 N.Y.2d 125, 127, 272 N.Y.S.2d 337, 219 N.E.2d 169 (1966). Finally, a party claiming the benefit of an equitable estoppel must have proceeded with the utmost good faith. *Induct-O-Matic Corp. v. Inductotherm Corp.*, 747 F.2d 358, 367 (6th Cir. 1984). A party triggers equitable estoppel by conduct inconsistent with a position later adopted that prejudices the rights of the other party who detrimentally relied on the prior conduct. Estoppel is "an equitable doctrine invoked to avoid injustice in particular cases." *Heckler v. Community Health Services of Crawford County, Inc.*, 467 U.S. 51, 59 (1984).

"Our courts have long had the power, both at law and equity, to bar the assertion of the affirmative defense of the Statute of limitations where it is the defendant's affirmative wrongdoing . . . which produced the long delay between the accrual of the cause of action and the institution of the legal proceeding" (*General Stencils, Inc. v. Chiappa*, 18 N.Y.2d 125, 128 [1966]). Thus, this court has held that equitable estoppel will apply "where plaintiff was induced by fraud, misrepresentations or deception to refrain from filing a timely action" (*Simcuski v. Saeli*, 44 N.Y.2d 442, 448-449 [1978]). Moreover, the plaintiff must demonstrate reasonable reliance on the defendant's misrepresentations (*see Simcuski*, 44 N.Y.2d at 449). A defendant/wrongdoer cannot take affirmative steps to prevent a plaintiff from bringing a claim and then assert the statute of limitations as a defense. It is therefore fundamental to the application of equitable estoppel for plaintiffs to establish that subsequent and specific actions by defendants somehow kept them from timely bringing suit (*see Matter of Steyer*, 70 N.Y.2d 990, 993 [1988]).

Ms. Banks attached in her Petition for Rehearing, as Exhibit 1, a published opinion from the Michigan Supreme

Court, *In re JK, Minor Family Independence Agency v. Melissa Kurcharski*, No. 121410, whereby the Court made a ruling that compliance with the parent/agency agreement contract negated any statutory basis for termination of a parents parental rights, otherwise a due process violation would occur. App. ___. Ms. Banks case is very similar to the *Kurcharski's* case, even with respect to the unlawful adoption of Ms. Banks children while on appeal in the state courts. In *Kurcharski*, the Michigan Supreme Court expressed disgust with the family court concerning the unlawful adoption of the *Kurcharski* child while the parent was on appeal in either one of their appeals Court. The family court proceeded with an adoption of Petitioners children, by a family unrelated to Petitioners family in 2001, while Ms. Banks case was pending in the Michigan Court of Appeals, this clearly shows that Michigan is using an unlawful pattern and practice. Ms. Banks raised this issue in her brief to the Michigan Supreme Court, they denied to hear the case.

Thus, Petitioners belief and reliance that after compliance with the parent/agency agreement contract she would regain custody of her children was reasonable and in good faith, pursuant to the Michigan Supreme Court's opinion in the *Kurcharski's* case, in which the Court cited United States Supreme Court case *Quillion v. Walcott*, 434 U.S. 246, 255, 985 S.Ct. 549, 54 L.Ed.2d 511 (1978) on pg. 9 of their Opinion. App. ___.

The Sixth Circuit has established the procedure a federal court must follow in order to determine the controlling law when a question of state law is at issue: [A] federal court must apply the law of the state's highest court. If, however, the state's highest court has not decided the applicable law, then the federal court must ascertain the state law from "all relevant data." Relevant data include the state's appellate court decisions: [W]e are mindful that an intermediate appellate court's judgment that announces a rule of law is a "datum for ascertaining state law which is not to be disregarded by a federal court unless it is convinced by other persuasive data that the highest court of the state would decide otherwise." Finally, relevant data also include the

state's supreme court *dicta*, restatements of law, law review commentaries, and the majority rule among other states. *Garden City Osteopathic Hospital v. HBE Corp.*, 55 F.3d 1126, 1130 (6th Cir. 1995) (citations omitted).

In Petitioners timely filed Petition for Rehearing, Petitioner asserted that the failure to return her children after she had complied with the parent/agency agreement contract constituted a breach of contract. App. ___. Thus, the state law at issue was the parent agency agreement contract. The Michigan Supreme Court, which is the states highest court, had not decided the applicable law for the breach of contract. Pursuant to the Sixth Circuits "established procedure", the Court failed to examine and ascertain the state law from "all relevant data". The Michigan Supreme Court's Order in Exhibit 2 of Petitioners timely filed (REPLY) Brief for the State Defendants, clearly shows that the Michigan Supreme Court did not decide the applicable law in their appellate decision concerning the parent/agency agreement contract. App. ___. In Petitioners case, the Sixth Circuit has refused to determine the controlling law when a question of state law was at issue. If the Sixth Circuit would have examined the "relevant data" in Exhibit 2, the question of state law would have been resolved with respect to the statute of limitations.

Petitioner alleged a RICO cause of action (Racketeer Influenced and Corrupt Organizations Act) – 18 U.S.C. §§ 1961 et seq., civil RICO statutes begin to run when the victim discovers or reasonably should have discovered its injury. *Rotella v. Wood*, 528 U.S. 549, 553-56 (2000). Ms. Banks alleged an injury from activity forbidden by 1962, and alleged each element of the racketeering activity declared as a racketeering activity relating to public officials and private individuals committing conduct prohibited by 18 U.S.C. § 1962(d), see *United States v. Frega*, 179 F.3d 793 (9th Cir. 1999) at pg. 803: (. . . Congress fully intended § 1346 to reach schemes that see to deprive the people of a state of the intangible right to honest services . . .). Under the plain language of 18 U.S.C. § 1962, the alleged racketeering activity must

constitute a "pattern." In this case, Ms. Banks contends that the pattern requirement is satisfied in her timely filed complaint on June 6, 2005 (R. 1) and also see (REPLY) BRIEF in the Sixth Circuit for Dr. Church Exhibit 5 Transcript. App. ___.

Whereby, Respondent Dr. Church bragged about how she has testified for the prosecutors and the attorney general offices in many different counties and criminal cases. Dr. Church further testified to the fact that she was just upstairs the day before in Judge Lacey's (not a defendant) courtroom and that she has testified "definitely more than a hundred times." Dr. Church's testimony clearly shows a threat of continued activity. As of the year 2006, Dr. Church is still serving the state of Michigan as an "expert witness", in any matter that comes before the courts, Dr. Church is still promoting fundraisers for her special license plates for child abuse and neglect for the Children's Trust Fund. Dr. Church is currently the trainer for Granholm's taskforce on Children's Justice and Dr. Church currently serves the Department of Human Services as a "medical advisor". Ms. Banks request that this Honorable Court take judicial notice of the statements made by Dr. Palusci in a recent news paper article, in the reasons why this Court should grant Certiorari. Dr. Church and Dr. Palusci as well as the other respondents in this case clearly show the threat of continued activity to keep the "cash cow" children and families coming. Hence, this is intrinsic fraud.

In H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 240 (1989), the Supreme Court explained that the pattern requirement is satisfied by showing (1) a relationship between the predicate acts and (2) the threat of continued activity. Expanding on the continuity component, the Court stated:

> "Continuity" is both a closed- and open-ended concept, referring either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition. A party alleging a RICO violation may

> demonstrate continuity over a closed period by providing a series of related predicates extending over a substantial period of time. *Predicate acts extending over a few weeks or months and threatening no future criminal conduct do not satisfy this requirement: Congress was concerned in RICO with long-term criminal conduct.* Often a RICO action will be brought before continuity can be established in this way. In such cases, liability depends on whether the threat of continuity is demonstrated. (emphasis added) (internal citation omitted).

The Sixth Circuit found in their order to affirm, that Petitioner had only made a conclusory claim of a "pattern of racketeering activity" that caused injury to her business or property pursuant to 18 U.S.C. §§1962(b) and 1964(c), then the Sixth Circuit accused Ms. Banks of failing to file a RICO claim within four years of the date in which she knew or should have known about her claim. Ms. Banks discovered that she could file a RICO cause of action after she discovered the intrinsic fraud and financial conflicts of interest. Petitioners case was dismissed with prejudice just one day after the last state employee defendant was served in the District Court, and not one respondent in this case has produced any evidence that stated or suggested that Ms. Banks had prior knowledge of a RICO action. Since, the Sixth Circuit has made this statement, it is obvious that they are upholding the erroneous date of January 12, 2001, as the date when Petitioners time begin to accrue set forth by the attorney general on behalf of the state defendants. In Ms. Banks (REPLY) briefs for the State Employee Defendants. App. ___, Dr. Palusci. App. ___, and Dr. Slovis. App. ___. Ms. Banks attached the entire eight page transcript of the January 12, 2001 hearing as an exhibit showing the Sixth Circuit that January 12, 2001 was a "Guardianship Hearing" *only*, between Ms. Banks parents Mr. Leo and Barbara Banks, in which they were granted full guardianship of their three grandchildren. Petitioner was in the Michigan Court of Appeals awaiting a decision in January 2001.

The Sixth Circuit's Order to affirm was influenced by erroneous facts argued by the assistant attorney general Thomas B. Renfro, who argued that Ms. Banks cause of action was barred by the three-year statute of limitations period set forth in Mich. Comp. Law Ann. § 600.5805(1) which states:

> A person shall not bring or maintain an action to recover damages for injuries to persons or property unless, after the claim first accrued to the plaintiff or to someone through whom the plaintiff claims, the action is commenced with the periods of time prescribed by this section.

The Sixth Circuit's Order to affirm was not supported by the record. The Sixth Circuit failed to rule on the pulpable defect in Petitioner's Motion for Reconsideration in the District court (R. 24, Ex. 3, 4, 5), and Petitioner (REPLY) Brief in the Sixth Circuit for the State respondent Exhibit 1. App. ___. The Sixth Circuit has refused to apply Michigan's three-year statute of limitations period under 42 U.S.C. § 1983 to Petitioner case accruing from the Michigan Supreme Court Order of Denial on April 29, 2003. The Sixth Circuits ruling to the contrary conflicts with *Board of Regents, University of New York v. Tomanio*, 446 U.S. 478 (1980) and *Hardin v. Straub*, 490 U.S. 536 (1989). Ms. Banks requested in her numerous filed pleadings, as a relief, that she be allowed to file a First Amended Complaint. The Sixth Circuit responded by stating that Ms. Banks had not alleged any additional facts on appeal that would have saved her complaint from dismissal on statute of limitation grounds, thus denying her the right to file a First Amended Complaint. App. ___.

On June 27, 2006, in the Sixth Circuit, Ms. Banks filed a Motion requesting that the attorney general be removed from the further tainting of her case, because the attorney generals office is a defendant and is alleged to be a part of the intrinsic fraud. App. ___.

On September 11, 2006, the Sixth Circuit denied the Petition for Rehearing in spite of the evidence and the

series of events that had transpired while on appeal in the Sixth Circuit. App. ___.

For example, Respondents Dr. Church and Dr. Palusci's appellee briefs were untimely filed, with the exception of respondent Dr. Slovis, based on the fact that the attorney general had made a telephone request for an extension of time "ex parte", to file his appellee brief just five days before his answer was due, which is strictly prohibited pursuant to 6th Cir. R. 26. (a) *COMPUTATION AND EXTENSION OF TIME* which states:

> **(a) How Sought.** *Extensions of time must be sought by written motion, not by stipulation of counsel or telephone request. The fact that the opposing party does not oppose the request for extension or that the opposing party previously has received an extension is not dispositive.*
>
> **(b) Extension of Time to File Brief.** *This Court does not favor applications for extensions of time for the filing of briefs.*

The assistant attorney general on behalf of the State Defendants never filed a motion requesting an extension of time to file his brief, neither did respondents Dr. Church and Dr. Palusci, they simply rode the coat tail of the attorney generals telephone request. On December 15, 2005, in opposition, Ms. Banks filed a timely motion objecting to the ex parte extension of time with exhibits and affidavits in support against the State Employee Defendants. App. ___. and respondents Dr. Church and Dr. Palusci. App. ___. The Sixth Circuit did not address the motions or even acknowledge the motions.

Furthermore, Dr. Church and Dr. Slovis committed perjury while on appeal in the Sixth Circuit. Ms. Banks factually alleged that Dr. Slovis sits on the board for Children's Hospital of Michigan and Children's Hospital of Michigan Self Insurance Plan Trust for Liability as a Trustee, which has as one of its programs, the financing of litigation through federal grant money, and that he was called in by the attorney general as an "expert witness" against Ms. Banks. Respondent Dr. Slovis denied the

allegations in his answer to Ms. Banks complaint in the District Court and the Sixth Circuit as "untrue." Ms. Banks in her timely filed (REPLY) BRIEF for Dr. Slovis, attached two documents in exhibit 3 showing that Dr. Slovis was indeed on the board as trustee and that Dr. Slovis had lied. App. ___.

Respondent Dr. Church also committed perjury to the Sixth Circuit in her untimely filed appellee brief, by bringing it to the Courts attention that she had examined my daughter Danielle. Ms. Banks in her timely filed (REPLY) Brief in the Sixth Circuit for Dr. Church, attached pages of the family court transcripts as exhibit 5, showing Dr. Church's own testimony where she stated she had never seen or examined Danielle because Ms. Banks and her daughter were discharged from the hospital before she arrived. App. ___. Also in Exhibit 4 of said (Reply) Brief, Petitioner attached medical records showing that there was no evidence of such fractures. This evidence was completely ignored by the Sixth Circuit. Respondent Dr. Church also failed to file her corporate disclosure statement with her pleadings in the Sixth Circuit. Ms. Banks brought this fact to the attention of the Court in her (REPLY) BRIEF for Dr. Church, it too was ignored. App. ___.

Given these facts, Ms. Banks discovered that Judge Ransey Guy Cole Jr. formerly, sat on the board of Children's Hospital as an Trustee for twelve years, while actively serving as a federal appellate judge in the Sixth Circuit. According to the National Association of Children's Hospital and Related Institutions (NACHRI) report attached as exhibit 4 in the Motion to Recuse, boards of trustees have made child abuse and neglect prevention and treatment a priority area for both child and legislative advocacy see MOTION TO RECUSE exhibit 4. App. ___.

Judge Cole should have recused himself *sua sponte* because Ms. Banks case is precisely about intrinsic fraud, financial conflict of interest, conflict of interest and non-disclosure of numerous judges, elected officials and officers of the court serving on various nonprofits, which generate federal grant money to unlawfully separate children from

their parents. Judge Cole factually sat on the Board of the Children's Hospital pursuant to his own biography attached as exhibit 1 in the MOTION TO RECUSE. App. ___. Children were likely removed from that hospital for suspected child abuse and neglect. Ms. Banks also discovered that the State of Ohio has a Children's Trust Fund.

The Ohio Children's Trust Fund is connected to the Michigan Children's Trust Fund and they both are contracted with the county hospitals, especially the Children's Hospitals. See MOTION TO RECUSE exhibit 4. App. ___. Both Children's Trust Funds are contracted with the Court ordered services involving the parent/agency agreement contract, thus, this is evidence of a pattern and practice.

The Children's Hospital that Judge Cole formally served, as a Trustee, is contracted with the Ohio Children's Trust Fund, which is connected to the Children's Hospital of Michigan, Henry Ford Hospital and DeVos Children's Hospital Spectrum Health, here in Michigan, where respondents Dr. Church, Dr. Slovis and Palusci are employed, or were employed. Upon this troubling discovery on July 19, 2006, Ms. Banks immediately filed a Motion to Recuse Judge Cole from her case pursuant to 28 U.S.C. § 455(a) which states:

Any justice, judge or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

Judge Cole did not recuse himself and decided Ms. Banks' case again, with respect to the PETITION FOR REHEARING, denying her the right to a "neutral" and detached judge.

Ms. Banks avenues are now to regain custody of her three minor children and seek damages against the officials and the court officers involved. Allegations that a private person acted jointly with a state official are sufficient to allege that he acted under color of state law, for the purposes of 42 U.S.C. § 1983. *Dennis v. Sparks*, 449 U.S. 24, 27-28, 66 L.Ed.2d 185, 101 S.Ct. 183 (1980). It is well settled that a private party is subject to liability under § 1983 if he conspires with or willfully engages in joint activity with the

state or its agents, *Adickes*, 398 U.S. at 52 (1970). Ms. Banks brought factual claims against respondent's Dr. Church, Dr. Slovis and Dr. Palusci under 42 U.S.C. § 1983, in their official, corporate and individual capacities which sufficiently alleged that they acted in concert with the attorney general and the state employee defendants, and showed that they acted under color of state law.

III. Proceedings Below

On October 13, 2000, Petitioner rights to her three minor children were terminated. On July 9, 2002, the Michigan Court of Appeals affirmed. (R. 24, Ex. 1). On September 16, 2002, the Michigan Court of Appeals denied Motion for Rehearing. (R. 24, Ex. 2). On January 28, 2003 the Michigan Supreme Court denied the delayed application for leave to appeal. (R. 24, Ex. 3.). On April 29, 2003, the Michigan Supreme Court denied Motion for Reconsideration. (R. 24, Ex. 4). On February 4, 2003, a Request and Order Terminating Court Jurisdiction and Final Order of Adoption was entered on February 4, 2003. (R. 24, Ex. 5). On June 6, 2005, Petitioner filed a Complaint in the United States District Court for the Eastern District of Michigan (R. 1). On July 27, 2005, the District Court Opinion and Order dismissing Complaint (R. 21). On August 5, 2005, Petitioner filed a Motion for Reconsideration in the District Court. (R. 24). On August 25, 2005, Petitioner filed a Motion to Vacate Court Order pursuant to Fed. R. Civ. P. 61 (R. 25). On August 25, 2005 Petitioner filed a timely Notice of Appeal in the U.S. Court of Appeals for the Sixth Circuit. (R. 26). On September 28, 2005 the District Court denied the Motion for Rehearing and the Motion to Vacate (R. 31). On June 19, 2006 the Sixth Circuit affirmed the District Court's Order on Statute of Limitations. App. ___. On July 27, 2006, Petitioner filed a Petition for Rehearing. App. ___. On September 11, 2006 the Sixth Circuit denied the Petition for Rehearing. App. ___.

REASONS FOR GRANTING THE PETITION

Supreme Court Rule 10 identifies considerations used by the Court in deciding whether to exercise its discretion

to grant a petition for writ of certiorari. On consideration is that the Court considers whether the court of appeals decision "has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power".

It is undisputed that the limitations period applicable to this case is three years. The Sixth Circuit found that Petitioners 42 U.S.C. § 1983 claims fell within Michigan's three-year statutory limitations period under Mich. Comp. Laws Ann. § 600.5805. The Court refused to apply the three-year statute to Petitioners § 1983 claim accruing from the time Petitioner was denied by the Michigan Supreme Court on April 29, 2003. The statute of limitation period in a 42 U.S.C. § 1983 action in Michigan is three years and begins to run when the plaintiff knows or has reason to know that the act providing the basis of her injury has occurred. *See Friedman v. Estate of Presser*, 929 F.2d 1151 (6th Cir. 1991).

I. Review is Warranted because Of Others Similarly Situated. Another Consideration Is The Importance To The Public Of The Issue.

According to the U.S. Department of Health and Human Services Administration for Children & Families report as of September 2006, there are currently over 18, 000 children in foster care in Michigan; thus other families are similarly situated. Petitioner requests that this Honorable Court take Judicial Notice of articles showing a pattern and practice.

On February 3, 2004, Michigan Attorney Janet M. Frederick wrote an article admitting that parents and children are result of abuse of power in the name of more state and federal funding. Attorney Janet Frederick stated: Basically it is make work by creating a case and keep your job or contract with the state government.

On November 4, 2003, in a report by the Los Angeles daily news, David Sanders, director of the county Department of Children and Family Services in Los Angeles admitted that 50 percent of the children in the system and adoptive homes could have been left in their parents care

and that they were needlessly placed in the system because of financial incentives in state and federal laws. On April 26, 2006, in the Detroit Free Press Respondent Dr. Vincent Palusci gave an interview stating that "We're shooting for 300 kids a year in this space, which is kind of small," said Palusci, 47. "When you look at the numbers of kids in the child protection system in Wayne County we could easily double and triple that." In 2005, the Michigan Children's Trust Fund reported that 28,100 children were victims of child abuse and neglect, nearly 80 percent of Michigan's children.

CONCLUSION

The Petition for a writ of Certiorari should be granted. The respondents scheme to engineer citizens into the court system to generate federal funding ultimately caused the petitioner to lose custody of her children. This is done solely because everything that involves the court is tied to some type of grant. Petitioner prays for an exercise of the Court's supervisory power.

Respectfully submitted,

STARLETTA L. BANKS
Pro Se
13533 Rutherford
Detroit, Michigan 48227
Telephone: 313.838.2582

APPENDIX A

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 05-2166

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

STARLETTA L. BANKS, Plaintiff-Appellant, v. JENNIFER GRANHOLM, et al., Defendants-Appellees.	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

ORDER

(Filed Jun. 19, 2006)

Before: DAUGHTREY and COLE, Circuit Judges; GRAHAM, District Judge.*

Starletta L. Banks, a Michigan resident proceeding pro se, appeals the dismissal of her civil complaint which was later construed as a civil rights complaint filed pursuant to 42 U.S.C. § 1983. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

* The Honorable James L. Graham, United States District Judge for the Southern District of Ohio, sitting by designation.

On June 6, 2005, Banks filed a complaint seeking monetary and injunctive relief against twelve named defendants and one thousand unnamed defendants alleging violations of at least twenty-four federal statutes and federal constitutional rights relating to the removal of her three children from her custody by the State of Michigan and the subsequent termination of her parental rights in October of 2000. The district court construed the complaint as seeking relief under § 1983 and dismissed the action because Banks failed to file the action within the applicable statute of limitations. Thereafter, Banks filed a motion for reconsideration which was denied. Banks now appeals.

The district court correctly dismissed Banks's claims on statute of limitations grounds. This court reviews de novo a district court's dismissal of a complaint under Rule 12(b)(6). *See PR Diamonds, Inc. v. Chandler*, 364 F.3d 671, 680 (6th Cir. 2004). "Dismissal of the complaint is proper 'only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" *Trzebuckowski v. City of Cleveland*, 319 F.3d 853, 855 (6th Cir. 2003) (quoting *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984)).

The statute of limitations for filing a § 1983 action in Michigan is three years. *See* Mich. Comp. Laws § 600.5805(8); *Wolfe v. Perry*, 412 F.3d 707, 713-14 (6th Cir. 2005). Furthermore, the statute of limitations period in a § 1983 action begins to run when the plaintiff knows or has reason to know that the act providing the basis of her injury has occurred. *See Friedman v. Estate of Presser*, 929 F.2d 1151, 1159 (6th Cir. 1991). Moreover, a plaintiff is not entitled to toll the statute of limitations in a § 1983 action during the time a related state court action is pending

unless provided for by state tolling rules. *Board of Regents of University of State of N. Y. v. Tomanio*, 446 U.S. 478, 490-91 (1980). Finally, a plaintiff can file a § 1983 claim in federal court without first resorting to state judicial remedies. *Id.*

Banks argues that her complaint was timely filed on June 6, 2005, because the last appeal from the judgment terminating her parental rights was denied well within the three-year statute of limitations for § 1983 claims on January 28, 2003. However, Banks's claims are based on the removal of her children from her home on October 21, 1998 and the subsequent termination of her parental rights. Furthermore, the last action Banks complains of in her complaint occurred in January 2001. Finally, Banks has not asserted that the statute of limitations should be tolled under Michigan law. Under these circumstances, Banks's § 1983 action was not timely filed.

Banks also argues that the trial court should have issued a lesser sanction and should have permitted her to amend her complaint to cure any deficiencies; however, she has not alleged any additional facts on appeal that would have saved her complaint from dismissal on statute of limitations grounds. Furthermore, the district court did not err when it dismissed the complaint in its entirety based on a motion to dismiss filed by fewer than all of the defendants, as the dismissal of non-moving defendants is proper if the arguments presented in the motion apply equally to all of the defendants and the plaintiff has an opportunity to respond. *See Quinn v. Shirey*, 293 F.3d 315, 325 n.4 (6th Cir. 2002). Dismissal of the claims against the non-moving defendants was proper in this case because the statute of limitations argument was relevant to all of

the defendants and Banks responded to the motion to dismiss.

Finally, Banks argues that the district court failed to address her RICO claim. While the district court did not specifically address Banks's RICO claim in its opinion, her RICO claim fails because she has made only a conclusory claim of a "pattern of racketeering activity" that caused injury to her business or property. *See* 18 U.S.C. §§ 1962(b) and 1964(c); *Advocacy Org. for Patients & Providers v. Auto Club Ins. Ass'n*, 176 F.3d 315; 321-22 (6th Cir. 1999). Furthermore, Banks failed to file her RICO claim within four years of the date in which she knew or should have known about her claim. *See Rotella v. Wood*, 528 U.S. 549, 553-56 (2000).

For the foregoing reasons, the district court's judgment is affirmed. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER
OF THE COURT

/s/ Leonard Green
Clerk

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

STARLETTA L. BANKS,
in pro per,

Plaintiff,

v.

JENNIFER GRANHOLM,
et al.,

Defendants. /

CASE NO. 05-72227
HON. LAWRENCE P. ZATKOFF

OPINION AND ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION AND MOTION TO VACATE

I. INTRODUCTION

This matter is before the Court on Plaintiff Starletta Banks' August 5, 2005 Motion for Reconsideration and August 25, 2005 Motion to Vacate. Pursuant to E.D. MICH. LR 7.1(g)(2), no response is permitted regarding Plaintiff's Motion for Reconsideration. Defendant Thomas Slovis has filed a response to Plaintiff's Motion to Vacate. Defendants Annamaria Church and Vincent Palusci have concurred in this Response.

II. ANALYSIS

A. Motion for Reconsideration

In Plaintiff's Motion for Reconsideration, Plaintiff argues for the first time that her statute of limitations

period should not have commenced running until April 29, 2003, when the Michigan Supreme Court denied her appeal.

A motion for reconsideration is governed by E.D. MICH. LR 7.1(g)(3), which states:

> Generally, and without restricting the court's discretion, the court will not grant motions for rehearing or reconsideration that merely present the same issues ruled upon by the court, either expressly or by reasonable implication. The movant must not only demonstrate a palpable defect by which the court and the parties have been misled but also show that correcting the defect will result in a different disposition of the case.

The Court finds that Plaintiff has failed to demonstrate a palpable defect by which the Court was misled. The Court will not permit Plaintiff to reargue the statute of limitations issue, an issue already ruled upon by the Court. Accordingly, Plaintiff's Motion for Reconsideration is denied.

B. Motion to Vacate

Plaintiff's Motion to Vacate under FED. R. CIV. P. 61 also argues that the Court erroneously determined the statute of limitations date. Though Plaintiff has filed her Motion to Vacate as a separate motion from her Motion for Reconsideration, the Court finds that Plaintiff's Motion to Vacate presents the same issue as Plaintiff's Motion for Reconsideration. For the reasons discussed in the previous section, Plaintiff's Motion to Vacate is denied.

III. CONCLUSION

For the above reasons, Plaintiff's Motion for Reconsideration and Motion to Vacate are HEREBY DENIED.

IT IS SO ORDERED.

/s/ Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: September 28, 2005

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

STARLETTA L. BANKS,

Plaintiff,

v.

JENNIFER GRANHOLM, et al.,

Defendants. /

CASE NO. 05-72227
HON. LAWRENCE P. ZATKOFF

OPINION AND ORDER

AT A SESSION of said Court, held in the United States Courthouse, in the City of Port Huron, State of Michigan, on July 27, 2005

PRESENT: THE HONORABLE LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

I. INTRODUCTION

This matter is before the Court on Defendants State of Michigan employees' (hereinafter, "State Defendants") Motion to Dismiss pursuant to Rule 12(b)(6). In Response, Plaintiff Starletta Banks has filed a Request for Trial Scheduling Order. The Court finds that the facts and legal arguments are adequately presented in the parties' papers and the decision process would not be significantly aided by oral argument. Therefore, pursuant to E.D. MICH. LR 7.1(e)(2), it is hereby ORDERED that the motion be resolved on the briefs submitted. For the reasons set forth below, Defendant's Motion to Dismiss is GRANTED.

II. BACKGROUND

Pro se Plaintiff Starletta Banks filed the present Complaint on June 6, 2005 against numerous employees of the state of Michigan, as well as against certain named individuals. At the heart of Plaintiff's Complaint is the allegation that Defendants, under color of law, kidnapped her three children on October 21, 1998. *See* Complaint, at 7. Based on this allegation, Plaintiff asserts numerous violations of federal law, including claims of constitutional violations under 42 U.S.C. § 1983.

III. LEGAL STANDARD

Rule 12(b)(6) provides that a complaint may be dismissed for failure to state a claim upon which relief may be granted. "In reviewing the motion, we must construe the complaint in the light most favorable to the plaintiff, accept all of the complaint's factual allegations as true, and determine whether the plaintiff undoubtedly can prove no set of facts in support of his claim that would entitle him to relief." *Penny/Ohlmann/Niemann, Inc. v. Miami Valley Pension Corp.*, 399 F.3d 692, 697 (6th Cir. 2005). In addition, the Court liberally construes the complaint of a *pro se* litigant. *See Estelle v. Gamble*, 429 U.S. 97, 106 (1976).

IV. ANALYSIS

Plaintiff's Complaint alleges numerous violations of federal statutes. Construing Plaintiff's Complaint liberally, the Court finds that Plaintiff is actually alleging a constitutional violation under 42 U.S.C. § 1983. This alleged constitutional violation relates to the alleged

kidnapping of Plaintiff's children by the state of Michigan on October 21, 1998.

In their brief, State Defendants direct the Court to *Carroll v. Wilkerson*, 782 F.2d 44 (6th Cir. 1986), and argue that Plaintiff's Complaint has not satisfied the applicable statute of limitations. In *Carroll*, the Sixth Circuit concluded that actions brought pursuant to 42 U.S.C. § 1983 must comply with the three year limitations period for personal injuries set forth in MCL 600.5806(10). *Carroll v. Wilkerson*, 782 F.2d at 45. The Court agrees with State Defendants that a three year statute of limitations is applicable in the present case.

Plaintiff's children were allegedly kidnapped in October of 1998, nearly seven years prior to the filing of this action in June of 2005. Even construing Plaintiff's Complaint liberally, the last action complained of occurred on January 12, 2001, when Plaintiff alleges that her parents were "arbitrarily and capriciously" denied custody of her children. *See* Complaint, at 9. Even this latest allegation took place nearly four and half years ago and is well outside the three year statutory period.

Instead of properly responding to State Defendants' argument that the statute of limitations has run, Defendant has filed a Request for Trial Scheduling Order. By this Request, Plaintiff asserts that the Court is required under FED. R. CIV. P. 16 to issue a scheduling order prior to hearing any motions in order to "eliminate all wasteful activity." *See* Plaintiff's Request, at 1. Plaintiff's interpretation of Rule 16 is unsupportable. The Court routinely adjudicates motions to dismiss prior to conducting a scheduling conference or issuing a scheduling order. By adjudicating such motions early, the Court is able to

dismiss those cases that cannot succeed as a matter of law. In this way, the Court is able to "eliminate all wasteful activity."

In conclusion, Plaintiff's Complaint fails to satisfy the three-year statute of limitations. Accordingly, Plaintiff's claims fail as a matter of law.

V. CONCLUSION

For the above reasons, the Court HEREBY GRANTS State Defendants' Motion to Dismiss.

IT IS SO ORDERED.

/s/ Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Date: July 27, 2005

APPENDIX D

No. 05-2166

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

STARLETTA L. BANKS, Plaintiff-Appellant,	)	
v.	)	ORDER
JENNIFER GRANHOLM, et al.,	)	(Filed, Sep. 11, 2006)
Defendants-Appellees.	)	

Before: DAUGHTREY and COLE, Circuit Judges; GRAHAM, District Judge.*

Starletta L. Banks has filed a petition for rehearing of this court's order entered June 21, 2006, affirming the district court's order dismissing his civil case.

Upon careful consideration, this panel concludes that it did not misapprehend or overlook any point of law or fact when it issued its order. Fed. R. App. P. 40(a).

The petition for rehearing is thus DENIED. The motions for recusal and for removal of the Michigan Attorney General as counsel in this appeal are denied.

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* The Honorable James L. Graham, United States District Judge for the Southern District of Ohio, sitting by designation.

ENTERED BY ORDER
OF THE COURT

/s/ Leonard Green
Clerk

APPENDIX E

Order
Entered: January 28, 2003

Michigan Supreme Court
Lansing, Michigan

Maura D. Corrigan,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

122707

In Re Banks/Austin, Minors

FAMILY INDEPENDENCE AGENCY,
Petitioner-Appellee,

v

STARLETTA BANKS,
Respondent-Appellant.
/

SC: 122707
COA: 231071
Wayne CC: 98-372109

On order of the Court, the delayed application for leave to appeal from the July 9, 2002 decision of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

s0123

[SEAL]

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 28, 2003 /s/ Corbin R. Davis
Clerk

APPENDIX F

Order
Entered: April 29, 2003

Michigan Supreme Court
Lansing, Michigan

Maura D. Corrigan,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

122707

In Re D.B. D.A., D.A., Minors

FAMILY INDEPENDENCE AGENCY,
Petitioner-Appellee,

v

STARLETTA BANKS,
Respondent-Appellant.
_____/

SC: 122707
COA: 231071
Wayne CC: 98-372109

On order of the Court, the motion for reconsideration of this Court's order of January 28, 2003 is considered, and it is DENIED because it does not appear that the order was entered erroneously.

t0422

[SEAL]

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 29, 2003 /s/ Corbin R. Davis
Clerk

APPENDIX G

Title 18 U.S.C. § 241 reads:

"Conspiracy against rights"

This statute makes it unlawful for two or more persons to conspire to injure, oppress, threaten, or intimidate any person of any state, territory or district in the free exercise or enjoyment of any right or privilege secured to him/her by the Constitution or the laws of the United States, (or because of his/her having exercised the same).

It further makes it unlawful for two or more persons to go in disguise on the highway or on the premises of another with the intent to prevent or hinder his/her free exercise or enjoyment of any rights so secured.

Punishment varies from a fine or imprisonment of up to ten years, or both; and if death results, or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title or imprisoned for any term of years, or for life, or may be sentenced to death.

Title 18 U.S.C. § 242 reads:

"Deprivation of rights under color of law"

This statute makes it a crime for any person acting under color of law, statute, ordinance, regulation, or custom to willfully deprive or cause to be deprived from any person those rights, privileges, or immunities secured or protected by the Constitution and laws of the U.S.

This law further prohibits a person acting under color of law, statute, ordinance, regulation or custom to willfully

subject or cause to be subjected any person to different punishments, pains, or penalties, than those prescribed for punishment of citizens on account of such person being an alien or by reason of his/her color or race.

Acts under "color of any law" include acts not only done by federal, state, or local officials within the bounds or limits of their lawful authority, but also acts done without and beyond the bounds of their lawful authority; provided that, in order for unlawful acts of any official to be done under "color of any law," the unlawful acts must be done while such official is purporting or pretending to act in the performance of his/her official duties. The definition includes, in addition to law enforcement officials, individuals such as Mayors, Council persons, Judges, Nursing Home Proprietors, Security Guards, etc., persons who are bound by laws, statutes ordinances, or customs.

Punishment varies from a fine or imprisonment of up to one year, or both, and if bodily injury results or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire shall be fined or imprisoned up to ten years or both, and if death results, or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

Title 18 U.S.C. § 371 reads:

"Conspiracy to commit offense or to defraud United States"

If two or more persons conspire either to commit any offense against the United States, or to defraud the United

States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

If, however, the offence, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

Title 28 U.S.C. § 455(a) reads:

"Disqualification of justice, judge, or magistrate judge

(a) Any Justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned."

Title 18 U.S.C. § 1346 reads:

Definition of "scheme or artifice to defraud"

For the purposes of this chapter, the term "scheme or artifice to defraud" includes a scheme or artifice to deprive another of the intangible right of honest services.

18 USCS §§ 1961 et seq. (1) reads:

"(1)(A)(B)(5)"Racketeering activity"

Any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following

provisions of title 18, United States Code: Section 201 (relating to bribery), Section 1512 (relating to tampering with a witness, victim or an informant), Section 1952 (relating to racketeering), Section 1956 (relating to the laundering of monetary instruments),

(5) "Pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and that last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

Title 18 U.S.C. § 1962 (a)(b)(c)(d) reads:

"Prohibited activities"

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or though collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding

securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

Title 18 U.S.C. § 1964 (a)(b)(c) reads:

"Civil remedies"

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or

ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of a violation of 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final.

Title 42 U.S.C. § 1983 reads:

"Civil action for deprivation of rights"

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for

redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

U.S. Constitution Fourteenth Amendment Section (1) reads:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Constitution of the State of Michigan of 1963 Article V Section 1 and Section 8 reads:

Section 1. Executive power. The executive power is vested in the governor.

Section 8. **Principal departments, supervision of governor; information from state officers.** Each principle department shall be under the supervision of the governor unless otherwise provided by this constitution. The governor shall take care that the laws be faithfully executed. He shall transact all necessary business with the officers of government and may require information in writing from all executive and administrative state officers,

elective and appointive, upon any subject relating to the duties of their respective offices.

Conflict Of Interest (Excerpt)

Act 318 of 1968

An Act to implement the provisions of section 10 of article 4 of the constitution relating to substantial conflicts of interest on the part of members of the legislature and state officers in respect to contracts with the state and the political subdivisions thereof; to provide for penalties for the violation thereof; to repeal all acts and parts of acts in conflict with this act; and to validate certain contracts.

Conflict of Interest Act 318 of 1968 Section 10 of Article 4 Of The Constitution, Section 2 §15.302 and Section 3 §15.303(a)(b) reads:

15.302 Direct or indirect interest in state contracts prohibited.

Sec. 2. No member of the legislature, herein referred to as a "legislator", nor any state officer shall be interested directly or indirectly in any contract with the state or any political subdivision thereof which shall cause a substantial conflict of interest.

15.303 Definitions.

Sec. 3. As used in this act:

(a) The term "state officer" means only a person occupying one of the following offices established by the constitution: governor, lieutenant governor; secretary of state; state treasurer; attorney general; auditor general; superintendent of public instruction; member of the state board of education; regent of the university of Michigan;

trustee of Michigan State University; governor of Wayne State University; member of a board of control of one of the other institutions of higher education named in section 4 of article 8 of the constitution or established by law as therein provided; president of each of the foregoing universities and institutions of higher learning; member of the state board for public community and junior colleges; member of the supreme court; member of the court of appeals; member of the state highway commission; director of the state highway commission; member of the liquor control commission; member of the board of state canvassers; member of the commission on legislative apportionment; member of the civil service commission; state personnel director; or member of the civil rights commission; together with his principal deputy who by law under specified circumstances, may exercise independently some or all of the sovereign powers of his principal whenever the deputy is actually exercising such powers.

(b) "Political subdivision" includes all public bodies corporate within but not including the state, including all agencies thereof or any non-incorporated body within the state of whatever nature, including all agencies thereof.

No. 06-825

Supreme Court, U.S.
FILED
JAN 1 5 2007
OFFICE OF THE CLERK

In The
Supreme Court of the United States

STARLETTA L. BANKS,

Petitioner,

v.

JENNIFER GRANHOLM, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI ON BEHALF OF RESPONDENTS, ANNAMARIA CHURCH, VINCENT PALUSCI, AND THOMAS SLOVIS

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OBJECTIONS TO PETITIONER'S QUESTIONS PRESENTED

These Respondents submit that Ms. Banks has improperly framed the relevant questions presented for review. Drs. Slovis, Church and Palusci hereby object to Ms. Banks' questions presented contained in her *Petition for Writ of Certiorari*, except for numeral 2 of her Questions Presented, which at least arguably sets forth, the relevant inquiry at issue in this case, i.e., whether her claim was untimely filed.

The issue is not whether Ms. Banks was "injured" under 42 USC § 1983 [Petition, Questions Presented 1], nor does it involve any inquiry into Ms. Banks' appeals from the state court's termination of her parental rights to the Michigan Court of Appeals or the Michigan Supreme Court and the propriety of the procedure followed in the state courts. Ms. Banks did not appeal the disposition of her child protective proceedings in federal court on the basis of alleged violations of her federal constitutional rights following the Michigan Supreme Court's denial of her application for leave to appeal. To the contrary, she filed suit in federal district court some two years after that late date alleging a "conspiracy" by the State of Michigan to fraudulently misappropriate federal funding earmarked for programs aimed at the protection and aid of abused and neglected children.

Ms. Banks' attempt to re-litigate the state court child protective proceedings via the instant petition is misplaced. Significantly, the issues regarding the "parent/agency agreement" [Petition, Questions Presented 3, 4, and 5] which Ms. Banks raises in her petition were not

OBJECTIONS TO PETITIONER'S QUESTIONS PRESENTED – Continued

raised at all in the courts below. Similarly, Ms. Banks did not raise the issue of the lawfulness of the alleged adoption of her children while her state law appeal was pending in either court below [Petition, Questions Presented 7] The sole issue under the circumstances is the propriety of the District Court's dismissal of Ms. Banks' complaint on the grounds of untimeliness and the Sixth Circuit's decision to affirm the district court on the grounds that Ms. Banks failed to comply with the relevant statutes of limitations in filing her claim.

Ms. Banks has only alleged that the lower courts have erred in their factual findings and misapplied properly stated rules of law. Despite her assertion, as explained more fully below, the lower courts did not misapply the law nor err in their factual findings. Moreover, Ms. Banks' petition does not establish that the courts below departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court as to call for an exercise of the United States Supreme Court's supervisory power; nor that the Sixth Circuit's decision is in conflict with another circuit's decision on the same matter; nor that the Sixth Circuit has decided an important question of federal law that has not been settled or that conflicts with relevant decisions of the United States Supreme Court. Rule 10(a) and (c). Therefore, granting of Ms. Banks' Petition for a writ of certiorari is not warranted by the circumstances.

LIST OF PARTIES

STARLETTA L. BANKS,

Petitioner,

v.

JENNIFER GRANHOLM, in her official, corporate and individual capacity. MICHAEL COX, in his official, corporate and individual capacity, RICHARD KAROUB, in his official, corporate and individual capacity, ANNAMARIA CHURCH, in her official, corporate and individual capacity, VINCENT PALUSCI, in his official, corporate and individual capacity, THOMAS SLOVIS, in his official,corporate and individual capacity, MARIANNE UDOW, in her official, corporate and individual capacity, JUDY HARTSFIELD, in her official, corporate and individual capacity, KATHLEEN JANSEN, in her official, corporate and individual capacity, HILDA GAGE, in her official, corporate and individual capacity TED FORREST, in his official, corporate and individual capacity, PATRICIA CAMPBELL, in her official, corporate and individual capacity, and DOES 1-1000,

Respondents.

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INTRODUCTION

Respondents, Dr. Slovis, Dr. Church and Dr. Palusci respectfully submit that Petitioner (Ms. Banks) has failed to articulate a compelling reason for the United States Supreme Court to grant her request for a writ of certiorari. Not only has she failed to articulate a reason that fits generally within the guidelines of subsections (a)-(c) of Rule 10, *supra,* but she has also failed to plead any other compelling reason warranting review by this Court.

STANDARD OF REVIEW

Rule 10 of the *Rules of the Supreme Court of the United States* states that "[a] petition for writ of certiorari will be granted only for compelling reasons . . . [a] petition for writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."

STATEMENT OF THE CASE AND STATEMENT OF FACTS

Petitioner filed a Complaint in this matter on June 6, 2005 alleging numerous federal statutes were violated, including 42 U.S.C. § 1983 and 18 U.S.C. § 1962. She alleged the State of Michigan, by its elected officials or employees, and others violated her rights by kidnapping her children on October 21, 1998. [R. 1 Complaint ¶ 23] The child custody proceedings, to which Petitioner refers, resulted in an Order terminating her parental rights on January 12, 2001. [R. 1 Complaint ¶ 29] Petitioner's claims are that state procedures were abused or misused or that

state officials abused their positions of authority when her children were removed from her custody and her parental rights were ultimately terminated. [R. 1 Complaint ¶ 22]

Respondents, Annamaria Church, M.D., Vincent Palusci, M.D., and Thomas Slovis, M.D., are not employees or elected officials of the State of Michigan. Respondent Church was a staff pediatrician and a forensic child abuse expert at Henry Ford Hospital, Detroit, Michigan, in October, 1998. Plaintiff alleged that Dr. Church initiated a report to Child Protective Services regarding suspected child abuse of one of appellant's children. [R. 1 Complaint ¶ 23] Dr. Church also testified in the custody proceedings. [R. 1 Complaint ¶ 30] In October, 1998, Respondent Slovis had medical staff privileges at Children's Hospital of Michigan in Detroit, Michigan, where he worked as a radiologist. It appears the only allegation against him is that he may have participated in a radiologic study relating to Petitioner or her children and may have testified in the child custody proceedings involving Petitioner. [R. 1 Complaint ¶ 24] Respondent Palusci is not alleged to have had any participation in the child custody proceedings involving Petitioner, at all. Rather, the sole allegation against him is that he was associated with DeVos Children's Hospital in Grand Rapids, Michigan, is somehow associated with the Children's Trust Fund and works with Dr. Church at DeVos Children's Hospital. [R. 1 Complaint ¶ 34, 47] It should be noted that Petitioner is alleged to be a resident of Detroit, Michigan. [R. 1 Complaint ¶ 7]

Respondent Slovis answered the Complaint. [R. 6] Respondents Church and Palusci's request for an extension to answer the Complaint was granted by the Court by its Order of July 15, 2005. Their answer was not due to be filed until August 3, 2005. [R. 20]

Meanwhile, a Motion to Dismiss was filed on June 28, 2005 by Defendants Judy Hartsfield, Kathleen Jansen, Hilda Gage, Ted Forrest, Jennifer Granholm, Richard Karoub and Marrianne Udow (the "State Defendants"). It asserted the Complaint was barred by the applicable statute of limitations. [R. 8]

The district court granted the motion by its Opinion and Order on July 27, 2005 and dismissed the case in its entirety on that date. [R. 21 and 23]

Petitioner filed a Request for Reconsideration of the dismissal on August 5, 2005. [R. 24] She also filed a Motion to Vacate on August 25, 2005. The district court entered its Order denying both requests on September 28, 2005. [R. 31]

Petitioner filed a Notice of Appeal as to the dismissal on August 25, 2005. [R. 26] Petitioner also filed a Request for Clerk's Entry of Default in the district court on September 28, 2005 [R. 34 and 35] Respondents Church and Palusci filed a response to that request. [R. 33] A notice of denial of clerk's entry of default was entered on October 4, 2005. [R. 36] No notice of appeal was filed from that denial.

The Sixth Circuit Court of Appeals issued its Order affirming the district court's dismissal of the Complaint on June 19, 2005. [Petition, Appendix A] Petitioner filed a Motion for Reconsideration and a Motion for Recusal and for removal of the Michigan Attorney General as counsel in the appeal. Those requests were denied by Order of the Sixth Circuit on September 11, 2005. [Petition, Appendix D] This Petition for a Writ of Certiorari ensued.

SUMMARY OF ARGUMENT

I. The Complaint was properly dismissed on the basis of the Statute of Limitations. Considering either the three-year statute applicable to claims under 42 U.S.C. § 1983 or the four-year statute of limitations applicable to 18 U.S.C. § 1962 (RICO) claims, the case was untimely filed. Under either theory, the cause of action accrued when Petitioner alleged that her children were "kidnapped" on October 21, 1998. Even construing the Complaint liberally, as the district court did, it is clear the last action complained of occurred on January 12, 2001, when the custody proceedings resulted in an order terminating Petitioner's parental rights. Subsequent appeals from that order do not toll the statute of limitations. The Complaint was filed on June 6, 2005, nearly four and one half years after that date, and is barred by the statute of limitations.

II. Even if the Complaint was considered to have been filed timely as to the RICO claim, it was properly dismissed under Fed. R. Civ. P. 12(b)(6) for the reason that it failed to state a valid claim for relief. The Complaint made only conclusory allegations of a "pattern of racketeering activity" without alleging facts sufficient to state a valid claim for relief under that provision.

III. Finally, the dismissal of the entire case on motion by some, but less than all the defendants, was appropriate because the basis for the dismissal was equally appropriate as to all the defendants. As to the attempted default of Respondents Church and Palusci, two further points are clear. First, there was no notice of appeal filed as to that request, so it is not before the court. Secondly, they were not in default. By Order of the court, their answers were

not due until August 3, 2005. The entire case was dismissed on July 27, 2005.

ARGUMENT

I. THE COMPLAINT WAS PROPERLY DISMISSED ON THE BASIS OF THE EXPIRATION OF THE STATUTE OF LIMITATIONS PRIOR TO ITS FILING.

Even though the Petitioner's Complaint contains many counts, the Sixth Circuit correctly addressed the substance of her claims: 42 U.S.C. § 1983 and 18 U.S.C. § 1962 (civil RICO) in its *de novo* review of the dismissal under Rule 12(b)(6) of the Complaint.[1] The Complaint was untimely filed under either theory.

When Congress enacted 42 U.S.C. § 1983, no statute of limitations was included. *Wilson v. Garcia*, 471 U.S. 261, 266, 105 S. Ct. 1938 (1985). It is well settled that state law will supply the statute of limitations for § 1983 claims, but federal law will determine when a federal claim accrues. *Sevier v. Turner*, 742 F.2d 262, 272 (6th Cir. 1984). The statute of limitations for filing a § 1983 claim in Michigan is three years. Mich. Comp. Laws § 600.5805(10); *Wolfe v. Perry*, 412 F.3d 707 (6th Cir. 2005). A claim accrues under § 1983 when the plaintiff "knows or has reason to know" of

[1] For example, Petitioner asserted 21 counts of alleged violations of federal criminal statutes. As a general rule, there is no private right of action based on violation of federal criminal statutes. *Central Bank of Denver v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 114 S. Ct. 1439, 128 L. Ed. 2d 119 (1994). See also, *Ryan v. Ohio Edison Co.*, 611 F.2d 1170 (6th Cir. 1979); *Morganroth & Morganroth v. DeLorean*, 123 F.3d 374 (6th Cir. 1997).

the injury which is the basis of her action. *Sevier v. Turner*, 742 F.2d at 273. The statute of limitations begins to accrue when the plaintiff has knowledge of the injury so a claim will not be extended indefinitely to defeat the purpose of the statute of limitations. *Id.* at 273.

The Complaint alleges Petitioner's children were taken into protective custody by the State of Michigan on October 21, 1998. Thus, on October 21, 1998, Petitioner had knowledge of, or should have known of, her injury. Therefore, this is when the statute of limitations accrued. Petitioner filed this Complaint on June 6, 2005, almost seven years after the three-year statute of limitations had accrued.

The district court observed that the case was time-barred even if the Complaint was liberally construed so that the accrual date was the date of the order granting full custody of her children to her grandparents, i.e., January 12, 2001.

Petitioner asserts that the accrual date should have been postponed until the conclusion of the state court appeals. Thus, she contends that her cause of action did not accrue until April 29, 2003, when the Michigan Supreme Court denied her motion for reconsideration of her earlier untimely application for leave to appeal. However, her position is unfounded. Her subsequent state court appeal of the order terminating her parental rights did not prevent or delay the accrual of her claim based on the allegedly unconstitutional interference with her parental rights. As the Sixth Circuit observed in its June 19, 2006 Order in this case:

> Moreover, a plaintiff is not entitled to toll the statute of limitations in a § 1983 action during

> the time a related state court action is pending unless provided for by state tolling rules. *Board of Regents of University of State of N. Y. v. Tomanio*, 446 U.S. 478, 490-91 (1980). Finally, a plaintiff can file a § 1983 claim in federal court without first resorting to state judicial remedies. *Id.* [Petition, Appendix A, p. 3]

The court went on to note that Petitioner had not asserted that the statute of limitations should be tolled under Michigan law. *Id.* Indeed, there is no such tolling provision. See, Mich. Comp. Laws § 600.5856.

In *Kurzawa v. Mueller*, 545 F. Supp. 1254 (E.D. Mich. 1982), *aff'd*, 732 F.2d 1456 (6th Cir. 1984), an action was brought under § 1983 arising from the termination of parental rights in a Michigan probate court. As in this case, the plaintiff-parents asserted their cause of action accrued when the appellate proceedings concluded rather than when their parental rights were terminated in the state court proceedings. The district court determined that the complaint was barred by the statute of limitations. In so ruling, the court reasoned that since the plaintiffs' claim was for the loss of the custody of their child without due process of law, then the latest date when they knew or should have known of the injury which was the basis for their claim was the date on which the state probate court terminated their parental rights. Since the case was filed more than three years after that date, it was barred by the statute of limitations. *Id.*, 545 F. Supp. at 1260.

The Sixth Circuit affirmed, but also held the physician defendants that examined the child as part of the proceedings were entitled to immunity. *Id.*, 732 F.2d at 1458.

Specifically, the contention that accrual of a § 1983 claim is delayed until the completion of the state court appellate proceedings was rejected in *Kurzawa v. Mueller, supra*. See, also, *Roberson v. Tennessee*, 399 F.3d 792, 794 (6th Cir. 2005). In *Roberson*, a § 1983 claim by a medical school student accrued when promotions committee recommended he not be readmitted to school, not when that determination was formally accepted. He was aware of an alleged denial of rights as of the earlier date. The same is true in the instant case.

Petitioner's Complaint alleges that her children were "kidnapped" by the police on October 21, 1998, when they came to her house without a warrant but with a petition from Child Protective Services. [R. 1 Complaint ¶ 23] In addition to the interference with her parental rights, she alleges that she was forced to attend many court hearings which hindered her ability to work and led to the loss of her employment in 1998-1999. [R. 1 Complaint ¶ 28] Further, she alleges that "[o]n January 21, 2001, the court granted full custody of plaintiff's children to plaintiff's parents . . . " [R. 1 Complaint ¶ 29] Under any conceivable interpretation of her allegations, the removal of one's children from the family home and court-ordered termination of parental rights are events " . . . that should have alerted the typical lay person to protect his or her rights." *Trezbuckowksi v. City of Cleveland*, 319 F.3d 853, 856 (6th Cir. 2003). She plainly knew of the injury alleged, i.e., interference with her constitutional right to custody of her children, by at least January, 2001 when the state court terminated her custodial rights. The appellate proceedings did not affect the accrual of her cause of action based upon the unconstitutional termination of her parental rights. *Kurzawa, supra*. Even if the state appellate courts had

reversed the probate court and restored her parental rights and custody, her claims had already accrued as the alleged injury occurred no later than January 12, 2001.

As to the 18 U.S.C. § 1962 (civil RICO) claim, it is clear that it is time barred for the same reason the § 1983 claim is barred, although the limitations period for a RICO claim is four years, not three. *Agency Holding Corp. v. Malley-Duff Assoc. Inc.*, 483 U.S. 143, 156, 107 S. Ct. 2759, 97 L. Ed. 2d 121 (1987). The Sixth Circuit so ruled in its Order affirming the district court dismissal. It held that Petitioner failed to file the Complaint within four years of when she knew or should have known about her claim. [Petition, Appendix A, p. 4] In so ruling, it relied on *Rotella v. Wood*, 528 U.S. 549, 120 S. Ct. 1075, 145 L. Ed. 2d 1047 (2000).

In *Rotella*, the court determined that a RICO claim accrues when the plaintiff knows or should have known of the injury for which the claim is made. *Id.* 528 U.S. at 553. Accrual of a RICO claim is not dependent upon discovery of a pattern of racketeering by the plaintiff. The court reasoned that such a delay in the accrual of the statute of limitations for RICO claims would undercut policies surrounding the purposes of the limitations of actions, including the elimination of stale claims and the need for certainty as to a plaintiff's opportunity for recovery and a defendant's potential liabilities. *Id.* 578 U.S. at 555. In *Rotella*, the plaintiff alleged that a group of doctors and their related business entities were improperly conspiring to admit, treat, and retain him at Brookhaven Psychiatric Pavilion for reasons related to their own financial interests rather than the patient's psychiatric condition in violation of civil RICO laws. Rotella was discharged from Brookhaven Psychiatric Pavilion in 1986, but failed to bring his RICO claim until 1997. He sought to justify his

tardy lawsuit by pointing to a circumstance where a Brookhaven director pleaded guilty to criminal fraud perpetrated through improper relationship and illegal agreements between the company and its doctors in 1994. The court determined his claim was nevertheless barred by the statute of limitations. The court reasoned that Rotella had discovered his injury in 1986 and could have made an investigation to discover the alleged racketeering. The four-year statute of limitations began to run when he was discharged such that he knew or should have known of his injury and not when he later learned of the guilty plea which he contended was when he learned of a pattern of racketeering. Thus, it was proper to dismiss the civil RICO claims by summary judgment.

Like *Rotella*, the civil RICO claim here is barred by the statute of limitations. Even if the court accepted the allegations made in the complaint as true, it is clear the RICO claims are time barred just as the § 1983 claim is barred. Petitioner knew of her injury on October 21, 1998 when her children were taken into protective custody by the state. Moreover, this claim is barred even if the court liberally construes her claim to have accrued as of the order of the state court terminating her parental rights, January 12, 2001. Computing the time period from that date shows that the Complaint was tardy, having been filed on June 5, 2005.

Moreover, despite Petitioner's wide ranging allegations of conspiracy to "use the Michigan foster care system as a 'child for profit' machine," the allegations against these Respondents, Drs. Church, Slovis and Palusci, must be viewed separately. *McCune v. City of Grand Rapids*, 842 F.2d 903, 906 (6th Cir. 1988), approving the holding in *Singleton v. City of New York*, 632 F.2d 185, 192 (2nd Cir.

1980), that "[t]he existence of a conspiracy does not generally postpone accrual of causes of action arising from the conspirators' separate wrongs." Instead, the timeliness of the specific claims brought against each defendant must be separately determined.

Here, as to Dr. Church, the allegations are that she initiated the petition that resulted in the "kidnap" of Petitioner's children on October 21, 1998 and testified at the child custody proceedings. [R. 1 – Complaint ¶ 23 and 30] The latter resulted in the January 21, 2001 Order in which Petitioner's parental rights were terminated. [R. 1 – Complaint ¶ 29] Thus, by any conceivable theory, the Complaint filed on June 6, 2005, is time barred for the reasons stated above.

As to Dr. Slovis, it appears the only allegation against him is that he may have participated in a radiologic study relating to Petitioner or her children and may have testified in the child custody proceedings involving Petitioner. [R. 1 Complaint ¶ 24] Thus, as with Dr. Church, the Complaint is time barred as to him as well.

As to Dr. Palusci, there is no allegation that he was involved in the child custody proceedings at all. However, there is an allegation that he works with Dr. Church at DeVos Children's Hospital [R. 1 Complaint ¶ 47] To the extent this can be read as asserting some relationship to this case, we would note that the last act complained of by Dr. Church was her testimony in the child custody proceedings which, as noted above, resulted in the January 21, 2005 Order terminating Petitioner's parental rights. Thus, the claim against him is time barred for the same reasons noted above.

Finally, the new claim by Petitioner that somehow an agreement she claims she entered into with the State of Michigan social workers somehow saves her case because of the Michigan six-year statute of limitations applicable to a breach of contract action, Mich. Comp. Laws § 600.5807, is not tenable. [Petition, pp. 4, 17] First, the instant Petition is the first time this theory was ever mentioned. Where issues are not raised in or considered by the Court of Appeals below, the Supreme Court will not ordinarily consider them. *Adickes v. S.H. Kress & Company,* 393 U.S. 144, 145 n.2, 90 S. Ct. 1598 (1970). Rather, only in exceptional cases does the Supreme Court review issues not raised and not considered by the Court of Appeals below. *Duignan v. United States,* 274 U.S. 195, 199, 47 S. Ct. 566, 71 L. Ed. 996 (1927).

This is not an exceptional case, nor does this particular issue present a compelling reason for review. First, the "parent/agency agreement" or "case service plan" as it is statutorily known, is a product of the Michigan Probate Code and is defined in Mich. Comp. Laws § 712A.13a(d). It is not a "contract" in the traditional sense of the term as the case service plan is statutorily required at the dispositional phase of a temporary wardship proceeding and may be imposed on a respondent parent without an "agreement." See, Mich. Comp. Laws § 712A.18f(2). Therefore the principles of contract law do not apply. Secondly, it is clear from a fair reading of the Petition and the Complaint that she has not asserted any breach of contract claim against these Respondents, Drs. Church, Slovis or Palusci, or that they had anything to do with some supposed agreement. [R. 1 – Complaint] Thus, her new contention has no bearing on the dismissal of Respondents Church, Palusci and Slovis. That ruling should not be disturbed.

II. THE RICO CLAIMS WERE PROPERLY DISMISSED AS THEY WERE CONCLUSORY AT BEST, IN ADDITION TO BEING UNTIMELY

Leaving aside the untimeliness of her claims, Ms. Banks' Complaint pleads insufficient facts to state a claim upon which relief can be granted and therefore, was properly dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

"The Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is a 'short and plain statement of the claim' that will give the Defendant fair notice of what Plaintiff's claim is and the grounds upon which it rests." *Conley v. Gibson,* 355 U.S. 41, 78 S. Ct. 99 (1957). Ms. Banks' Complaint is neither short nor plain. Nevertheless, it failed to give Dr. Slovis, Dr. Church and Dr. Palusci fair notice of the claims against them. In addition to being convoluted, nonsensical and confusing, it states conclusory allegations and legal conclusions without supporting factual allegations. Therefore, the lower courts did not err in concluding that Ms. Banks failed to state a claim upon which relief can be granted.

In order to state a claim under 18 U.S.C. § 1962(b), Plaintiff must sufficiently allege that "Defendants (1) acquired or maintained, (2) through a "pattern of racketeering activity" or the "collection of an unlawful debt," (3) an interest in, or control of an enterprise, (4) engaged in, or the activities of which affect, interstate or foreign commerce." *Advocacy Organization for Patients and Providers v. Auto Club Insurance Association*, 176 F.3d 315 at 321-322 (6th Cir. 1999). The elements of a claim under 18 U.S.C. § 1962(a) are: (1) use or investment of income or proceeds of such income received or derived from, (2) a

pattern of racketeering activity or collection of an unlawful debt, (3) in acquisition of interest in, or the establishment or operation of any enterprise, and (4) engaged in, or the activities of which affect, interstate or foreign commerce. The elements of a claim under 18 U.S.C. § 1962(c) are: (1) conduct or, participate in the conduct of, (2) an enterprise engaged in, or the activities of which affect interstate or foreign commerce, (3) through a pattern of racketeering activity or collection of unlawful debt, and (4) being a person employed by or associated with such an enterprise. 18 U.S.C. § 1962(d) proscribes any conspiracy to violate §§ 1962(a), (b), and (c).

Further, for a RICO violation, a plaintiff must establish a "pattern of racketeering activity." This is defined in 18 U.S.C. § 1961(1) and includes a litany of acts which can constitute such a pattern. Included are numerous crimes under both state and federal law. This means that before, and in addition to, alleging the above elements of the RICO violations themselves, a plaintiff must first sufficiently state the facts that make up the elements of the crimes that are alleged to amount to the pattern of racketeering activity. Essentially, this is establishing a pattern of crimes that constitute an element of the larger RICO offense.

Finally, in order to state a claim under 18 U.S.C. § 1964 and recover damages in a civil action, a plaintiff must allege one of the violations of § 1962, above, and, in addition, allege the additional element that it injured them in business or property.

Ms. Banks' purported claims under 18 U.S.C. § 1962 are contained in Paragraphs 101-107 of Banks' Complaint. [R. 1] Ms. Banks stated that, "Defendants' predicate acts

resulted in severe economic, financial, health and job loss to plaintiff . . . "; "Defendants are members and associates of a 'racketeering enterprise' . . . "; "Defendants met, conspired and engaged in the same pattern and practice . . . to operate the Courts as racketeering enterprise and generate false debts." In addition to these conclusory statements, Banks lists the different crimes that she alleged these Respondents committed as part of the "pattern of racketeering activity." However, she failed to allege facts that would tend to establish the elements of those crimes as predicate acts. Despite Ms. Banks' conclusions that the many named defendants, generally, violated criminal statutes, she states no facts that would tend to support them. Significantly, this is a prerequisite to establishing a violation of § 1962. Therefore, Banks' allegations are insufficient to state a claim for violations of § 1962.

In *Advocacy Organization for Patients and Providers*, the Sixth Circuit considered the issue of the sufficiency of pleadings in a civil RICO claim brought under § 1962(b). In that case, plaintiffs alleged mail and wire fraud, in addition to extortion as the predicate acts for a pattern of racketeering activity. As to the mail and wire fraud claims contained in plaintiffs' complaint, the court said:

> Rule 9(b) of the Federal Rules of Civil Procedure provides that in a complaint alleging fraud, "the circumstances constituting fraud . . . shall be stated with particularity." Fed. R. Civ. P. 9(b). The purpose of Rule 9(b) is to provide fair notice to the defendant so as to allow him to prepare an informed pleading responsive to the specific allegations of fraud. The Sixth Circuit reads rule 9(b)'s requirements "liberally . . . requiring a plaintiff, at a minimum, to allege the time, place,

> and content of the alleged misrepresentation on which he or she relied; the fraudulent scheme; the fraudulent intent of the defendants; and the injury resulting from the fraud."

Advocacy Organization for Patients and Providers, 176 F.3d at 322 (citations omitted). Other circuits are in agreement with the heightened pleading requirements for RICO claims. See, e.g., *Slaney v. The Intern Amateur Athletic Federation,* 244 F.3d 580 (7th Cir. 2001); *Federal Land Bank of Omaha v. Gibbs,* 809 F.2d 493 (8th Cir. 1987).

Here, Ms. Banks failed to allege the time, date, place and content of the misrepresentations. As described above, that is the minimum required under Rule 9(b) under the Sixth Circuit's reading and the heightened pleading requirements for RICO endorsed by other Circuits. Any allegations of fraud must fail to state a claim against Drs. Slovis, Church and Palusci as to the element of "pattern of racketeering activity." Therefore, Ms. Banks did not sufficiently plead a violation of § 1962.

Finally, Ms. Banks has not shown how these alleged acts of the Defendants have injured her in business or property as required by 18 U.S.C. § 1964. Ms. Banks has made a statement that she has been injured economically, but has failed to allege exactly how the RICO violation injured her in that regard.

The courts are "required to accept only well pleaded facts as true, not the legal conclusions that may be alleged or that may be drawn from the pleaded facts." *Blackburn v. Fisk University*, 443 F.2d 121 at 124 (6th Cir. 1971), citing *L'Orange v. Medical Protective Co.,* 394 F.2d 57 (6th Cir. 1968), and *Sexton v. Barry,* 233 F.2d 220 (6th Cir.

1956). Despite its length, Ms. Banks' Complaint is almost devoid of well-pleaded facts. Rather, Ms. Banks has alleged only legal conclusions in her Complaint. There is a glaring lack of factual allegations relating to basic information that would be known to Ms. Banks such as time, place, person and content. Ms. Banks' Complaint did not allege facts sufficient to support her legal conclusions and it did not fairly apprise Respondents Slovis, Church and Palusci of the claims against them. Ms. Banks' Complaint did not state a claim upon which relief could be granted. As the panel of the Sixth Circuit pointed out in affirming the district court, Ms. Banks made only conclusory allegations of a pattern of racketeering activity that caused injury to her business or property. Under these circumstances, no error was committed by either the district court dismissing Ms. Banks' claim or the Sixth Circuit in affirming the district court.

III. THE DISMISSAL OF THE ENTIRE CASE BY THE DISTRICT COURT ON MOTION BY SOME DEFENDANTS WAS PROPER AND DID NOT AFFORD PETITIONER AN OPPORTUNITY TO FILE A DEFAULT AGAINST RESPONDENTS CHURCH AND PALUSCI.

As noted by the Sixth Circuit in this case, the district court's dismissal of the entire case on motion by less than all the defendants was proper where the basis for the dismissal, statute of limitations, applied equally to all defendants, relying upon *Quinn v. Shirey*, 293 F.3d 315, 325 n.4 (6th Cir. 2002). [Petition, Appendix A, p. 3] Thus, the case was properly dismissed as to Respondents Church, Palusci and Slovis. Further, her argument that she was entitled to a default as to Respondents Church

and Palusci is untenable. Drs. Church and Palusci were granted an extension to file their answer to the complaint to a date after the entire case was dismissed. [R. 20 – July 15, 2005 Order Enlarging Time to Answer Complaint] Their answer to the Complaint was not due until August 3, 2005. The district court dismissed the Complaint with prejudice on July 27, 2005. This was prior to the due date for their response to the Complaint, thus making a response unnecessary. It was not until several months after the Complaint was dismissed that plaintiff first sought to have the clerk enter a default. The clerk properly refused to enter a default against Respondents Church and Palusci by a Notice dated October 4, 2005, because the complaint had already been dismissed by Judgment entered on July 27, 2005. [R. 36] Thus, they were never in default. Once the complaint was dismissed with prejudice, they had no further obligation to submit an answer or file a motion to dismiss the case.

CONCLUSION

WHEREFORE, Respondents, Annamaria Church, Thomas Slovis, and Vincent Palusci, request this honorable court to deny the Petition for Writ of Certiorari.

Respectfully submitted,

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Supreme Court, U.S.
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No. 06-825

In The
Supreme Court of the United States

STARLETTA LUQUISE BANKS,

Petitioner,

v.

GRANHOLM, ET AL.

Respondents,

On Petition for Writ of Certiorari
To The United States Court of Appeals
For The Sixth Circuit

REPLY TO BRIEF IN OPPOSITION

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REPLY

Petitioner Starletta L. Banks strongly objects to Respondents AnnaMaria Church, Vincent Palusci and Thomas Slovis' Brief in Opposition to Petition For Writ of Certiorari because the aforementioned Respondents are misleading the Court. The Questions Presented in Petitioner's Writ of Certiorari were raised and argued in her pleadings in the courts below. Petitioner is within the law to ask this Honorable Court to consider the Questions Presented in her Petition for Writ of Certiorari. The Respondents did not challenge or object to the issues raised in the courts below thus, they should not be allowed to challenge the issues and object in this Court. The only argument raised by the aforementioned Respondents, including the State Respondents, who signed a waiver to the Petition for Writ of Certiorari, was that Petitioner's 42 U.S.C. § 1983 claims were barred by the statute of limitation set forth in Mich. Comp. Laws Ann. § 600.5805(1) and (10).

Secondly, Petitioner strongly objects to Respondents AnnaMaria Church and Vincent Palusci because the two Respondents filed untimely briefs, while on appeal in the Sixth Circuit. The two aforementioned Respondents' due date to file a brief in the Sixth Circuit was December 13, 2005. Petitioner filed a motion in the Sixth Circuit on December 21, 2005 pursuant to Fed. R. App. P. 31 because she had not yet received a brief from AnnaMaria Church and Vincent Palusci. App. _. pursuant to Fed. R. App. P. 31, Serving and Filing Briefs which states the following:

> (c) Consequence of Failure to File. An Appellee who fails to file a brief will not be heard at oral argument, unless the court grants permission.

In addition, Petitioner filed a timely (reply) motion on January 21, 2006 arguing that the two aforementioned Respondents had violated 6 Cir. Rule 26 because they did not file a motion requesting an extension of time to file their briefs. App. ___. The two Respondents simply rode the coattail of the attorney general's telephone request for an extension of time to file their brief. App. ___.

Pursuant to 6 Cir. Rule 26 COMPUTATION AND EXTENSION OF TIME which states the following:

> (a) How Sought. Extensions of time must be sought by written motion, not by stipulation of counsel or telephone request. The fact that the opposing party does not oppose the request for extension or that the opposing party previously has received an extension is not dispositive.
>
> (b) Extension of Time to File Brief. This Court does not favor applications for extensions of time for the filing of briefs.

Petitioner requested in the aforementioned motions filed in the Sixth Circuit that any argument submitted by the Respondents AnnaMaria Church and Vincent Palusci should not be considered thus, oral argument should be denied and a judgment by default was again requested. It is for these reasons Petitioner respectfully requests that any argument and objection submitted by AnnaMaria Church and Vincent Palusci in opposition in this Honorable Court, should not be considered.

Numeral 1 of Petitioner's Questions Presented in the Petition for Writ of Certiorari is an issue because the Sixth Circuit and the District Court did not apply Michigan statute governing fraud to Petitioner's 42 U.S.C. § 1983 cause of action. Petitioner filed a complaint in the United States District Court for the Eastern District of Michigan on June 6, 2005 with a jury demand alleging intrinsic fraud, financial conflict of interest and non-disclosure. Petitioner discovered shortly after being denied by the Michigan Supreme Court that the Respondents involved with the termination of her parental rights have a scheme to generate federal funding by creating cases and situations that do not exist to generate this money. Petitioner discovered that there is a federal grant for child abuse/neglect involving children with unexplained or suspicious "rib fractures" and "skull fractures" which was the foundation that led to the unlawful removal of Petitioner's children and as a result Petitioner's parental rights to her three minor children were severed.

In response to Petitioner's complaint that the Respondents scheme to use her children as grant money cash cows to defraud the government of grant money resulted in the unlawful termination of Petitioner's parental rights to her three minor children by persons acting under color of law, resulting in an injury to Petitioner, Respondent Thomas Slovis filed an answer to the complaint with affirmative defenses (R. 6), Respondents AnnaMaria Church and Vincent Palusci filed a Memorandum Brief in Support of Motion to Enlarge Time for Filing Responsive Pleadings to respond to the complaint (R. 11) and the Attorney General filed a motion to dismiss Petitioners complaint pursuant to Fed. R. Civ. P. 12(b)(6) (R. 8). The Attorney General argued in his motion to dismiss that

Petitioner 42 U.S.C. § 1983 claim was time barred because Petitioner failed to comply with the three year time limitations for personal injuries set forth in Mich. Comp. Laws Ann. § 600.5805(1) (R. 8 p. 2). App. ___. The District Court agreed that Petitioner claims failed to satisfy the three year time limitations for personal injuries set forth in Mich. Comp. Laws Ann. § 600.5805(10) (R. 21 p. 3). App. ___. The Sixth Circuit affirmed. App. ___.

The Attorney General on behalf of the state defendants admitted that Appellant did state a claim for relief under 42 U.S.C. § 1983, and that Appellant's claims must comport with the three year statute of limitations claim in Mich. Comp. Laws Ann. § 600.5805(1) (R. 8, p. 2). App. ___.

Respondents AnnaMaria Church, Thomas Slovis and Vincent Palusci agreed that Petitioner 42 U.S.C. § 1983 claim fell within Michigan statute of limitations pursuant to Mich. Comp. Laws Ann. § 600.5805(10) see appellee brief for Respondent AnnaMaria church for the Sixth Circuit (App. ___. p. 3), see appellee brief for Respondent Thomas Slovis for the Sixth Circuit (App. ___. p. 8) and see appellee brief for Vincent Palusci for the Sixth Circuit (App. ___. p. 6).

Petitioner agrees that the three-year statute of limitations under Mich. Comp. Laws Ann. § 600.5805(1) applies to her 42 U.S.C. § 1983 claim.

It is undisputed that the limitations period applicable to Petitioner case is three years as established in Michigan's statute governing personal injury action. Mich. Comp. Laws Ann. § 600.5805(10) which states:

> The period of limitations is three years after the time of death or injury for all other actions to recover damages for the death of a person, or for injury to a person or property.

The statute of limitations on Petitioners fraud claim, pursuant to Mich. Comp. Laws Ann. § 600.5855 Fraudulent concealment of claim or identity of person liable; discovery which states:

> If a person who is or may be liable for any claim fraudulently conceals the existence of the claim or the identity of any person who is liable for the claim from the knowledge of the person entitled to sue on the claim, the action may be commenced at any time within 2 years after the person who is entitled to bring the action discovers, or should have discovered, the existence of the claim or the identity of the person who is liable for the claim.

The Sixth Circuit did not apply the appropriate state statute of limitations and the coordinate tolling rules in Petitioners 42 U.S.C. § 1983 cause of action. The Sixth Circuit ruling conflicts with *Board of Regents, University of New York v. Tomanio,* 446 U.S. 478 (1980).

The Sixth Circuit refused to apply Michigan's statute governing personal injury action. Mich. Comp. Laws Ann. § 600.5805(10) and Mich. Comp. Laws Ann. § 600.5855 to Petitioners 42 U.S.C. § 1983 cause of action. The statute of limitations period in a 42 U.S.C. § 1983 cause of action in Michigan is three years, *Wolfe v. Perry,* 412 F.3d 707, 713-14 (6th Cir. 2005), and begins to run when the plaintiff knows or has reason to know that the act providing the basis of her injury has occurred. *See Friedman v.*

Estate of Presser, 929 F.2d 1151 (6th Cir. 1991). Supreme Court Rule 10 identifies considerations used by the Court in deciding whether to exercise its discretion to grant a Petition for Writ of Certiorari. On consideration is whether a United States court of appeals has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Petitioner requests that the Court take Judicial Notice of Mich. Comp. Laws Ann. § 600.5805 (App. 3), Mich. Comp. Laws Ann. § 600.5855 (App. 3), The Request and Order Terminating Court Jurisdiction filed in the Third Circuit Wayne County Court indicating the final order of adoption of Petitioners children on February 4, 2003 by Hon. Sheila Gibson Manning which clearly indicate that an issue arose as to the date of the last complained act or occurring as a violation of Petitioners rights under 42 U.S.C. § 1983. (App. 1). The final order of adoption is a part of the record as Exhibit 5 in Petitioners Motion for Reconsideration in the District Court (R. 24, Ex. 5) and Petitioners Reply Brief for the State defendants in the Sixth Circuit as Exhibit 1 App. ___. Petitioner respectfully brings to the attention of this Honorable Court a published Opinion from the Michigan Supreme court *In re JK, Minor Family Independence Agency v. Melissa Kurcharski,* No. 121410. Petitioner attached the aforementioned Opinion at Exhibit 1 to her timely filed Petition for Rehearing in the Sixth Circuit. App. ___. Petitioner argued that it was not unreasonable for her to have appealed to the Michigan Supreme Court. In the aforementioned case, *Melissa Kurcharski* appealed to the

Michigan Supreme Court for the return of her child challenging the unlawful termination of her parental rights to her child and the unlawful adoption of her child while her State court action was pending. The Michigan Supreme Court reversed the decision of the Michigan Court of Appeals and the family court and ordered the child returned to his mother namely, because *Melissa Kurcharski* had complied with the parent/agency agreement contract and the adoption was unlawful. Petitioner raised and argued the parent/agency contract in the courts below, which is an important issue because the Petitioner was misled to comply with the contract for reunification with her children. The Attorney General misled Petitioner that her children were one court hearing away, then petitioned the family court for permanent custody and took Petitioner's children. Thus, Petitioner is within the law to ask this Honorable Court to consider the parent/agency agreement contract. The Respondents have misled this Court in their Opposition Brief that Petitioner slept on her rights. The Respondents cannot reasonably argue that Petitioner failed to protect her constitutional rights because she diligently pursued and timely appealed in state court. Petitioner is deprived of life and liberty without due process of law. The relationship between the Petitioner and her children is Constitutionally [**14] protected. *Quilloin v. Walcott, 434* U.S. 246, 255, 98 S. Ct. 549, 54 L. Ed. 2d 511, *reh'J denied,* 435 U.S. 918, 98 S. Ct. 1477, 55 L. Ed. 2d 511 (1978); *Stanley v. Illinois,* 405 U.S. 645, 658, 92 S. Ct. 1208, 31

L. Ed. 2d 551 (1972); *Meyer v. Nebraska,* 262 U.S. 390, 339-401, 43 S. Ct. 625, 67 L. Ed. 1042 (1923).

CONCLUSION

The Petition for a Writ of Certiorari should be granted because Petitioner's 42 U.S.C. § 1983 claim filed on June 6, 2005 was not time barred by the statute of limitations as set forth in Mich. Comp. Laws Ann. § 600.5805(1).

Respectfully submitted,

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STATE OF MICHIGAN THIRD JUDICIAL CIRCUIT COURT FAMILY DIVISION — JUVENILE SECTION	REQUEST AND ORDER TERMINATING COURT JURISDICTION	File Number: 98-372,109

(Filed Feb. 4, 2003)

1. In the matter of **Darren Darnell Austin (DOB: 08/18/99), adoptee Darius Shakur Banks (DOB: 01/11/94), adoptee Danielle Brianna Austin (DOB: 01/12198), adoptee**

2. **I, Denise Fitzhugh, Court Executive I** request that the jurisdiction of this court be terminated, O **with** ● **without** a hearing, for the following the reason:

[ ] a. Terms of probation have been completed.

[ ] b. Minor has attained maximum jurisdictional age.

c. Minor has been returned to the full care, custody, and control of parent(s), and further court supervision is not necessary.

[x] d. Other: Final Order of Adoption was entered on February 04, 2003 by the Honorable **Sheila Gibson Manning,** Presiding judge of the Third Judicial Circuit Court-Family Division-Juvenile Section

DISTRIBUTION:

Orchards Children's Services
30215 Southfield Road-Suite 100
Southfield, Michigan 4807 5

LADA-Civil Division
Suite 2400
645 Griswold
Detroit, Michigan 48226

Approved By:	**Denise F i t z h u g h**
Title:	**Court Executive I**
Date:	**02/04/2003**
Address:	**1025 E. Forest Ave.**
City, State, Zip:	**Detroit, MI 48207**
Telephone #:	**313-833-0354**

3. **IT IS ORDERED that the jurisdiction of this court is terminated in this case except that the court reserves the right to enforce payments of support and attorney fees that have accrued up to and including the date of this order. (The court may insert provisions for reimbursement.)**

Feb. 04 2003 /s/ Sheila G. Manning

Date Judge Bar No.

REVISED JUDICATURE ACT OF 1961
(EXCERPT) Act 236 of 1961

600.5855 Fraudulent concealment of claim or identity of person liable; discovery.

If a person who is or may be liable for any claim fraudulently conceals the existence of the claim or the identity of any person who is liable for the claim from the knowledge of the person entitled to sue on the claim, the action may be commenced at any time within 2 years after the person who is entitled to bring the action discovers, or should have discovered, the existence of the claim or the identity of the person who is liable for the claim, although the action would otherwise be barred by the period of limitations.

600.5805 Injuries to persons or property; limitations; "dating relationship" defined.

(1) A person shall not bring or maintain an action to recover damages for injuries to persons or property unless, after the claim first accrued to the plaintiff or to someone through whom the plaintiff claims, the action is commenced within the periods of time prescribed by this section.

(2) The period of limitations is 2 years for an action charging assault, battery, or false imprisonment.

(3) The period of limitations is 5 years for an action charging assault or battery brought by a person who has been assaulted or battered by his or her spouse or former spouse, an individual with whom he or she has had a child in common, or a person with whom he or she resides or formerly resided. This limitation applies to causes of

action arising on or after February 17, 2000 and to causes of action in which the period of limitations described in subsection (2) has not already expired as of February 17, 2000.

(4) The period of limitations is 5 years for an action charging assault and battery brought by a person who has been assaulted or battered by an individual with whom he or she has or has had a dating relationship. This limitation applies to causes of action arising on or after January 1, 2003 and to causes of action in which the period of limitations described in subsection (2) has not already expired as of January 1, 2003.

(5) The period of limitations is 2 years for an action charging malicious prosecution.

(6) Except as otherwise provided in this chapter, the period of limitations is 2 years for an action charging malpractice.

(7) The period of limitations is 2 years for an action against a sheriff charging misconduct or neglect of office by the sheriff or the sheriff's deputies.

(8) The period of limitations is 2-years after the expiration of the year for which a constable was elected for actions based on the constable's negligence or misconduct as constable.

(9) The period of limitations is 1 year for an action charging libel or slander.

(10) The period of limitations is 3 years after the time of the death or injury for all other actions to recover damages for the death of a person, or for injury to a person or property.

(11) The period of limitations is 5 years for an action to recover damages for injury to a person or property brought by a person who has been assaulted or battered by his or her spouse or former spouse, an individual with whom he or she has had a child in common, or a person with whom he or she resides or formerly resided. This limitation applies to causes of action arising on or after February 17, 2000 and to causes of action in which the period of limitations described in subsection (10) has not already expired as of February 17, 2000.

(12) The period of limitations is 5 years for an action to recover damages for injury to a person or property brought by a person who has been assaulted or battered by an individual with whom he or she has or has had a dating relationship. This limitation applies to causes of action arising on or after January 1, 2003 and to causes of action in which the period of limitations described in subsection (2) has not already expired as of January I, 2003.

(13) The period of limitations is 3 years for a products liability action. However, in the case of a product that has been in use for not less than 10 years, the plaintiff, in proving a prima facie case, shall be required to do so without benefit of any presumption.

(14) The period of limitations for an action against a state licensed architect, professional engineer, land surveyor, or contractor based on an improvement to real property shall be as provided in section 5839.

(15) As used in this section, "dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement. Dating relationship does not include a casual relationship or an

ordinary fraternization between 2 individuals in a business or social context.